

tive under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 31, 1963.

(b) *Order.* (1) The respective quantities of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., January 5, 1964, and ending at 12:01 a.m., P.s.t., January 12, 1964, are hereby fixed as follows:

- (i) District 1: 800,000 cartons;
  - (ii) District 2: 191,352 cartons;
  - (iii) District 3: Unlimited movement;
  - (iv) District 4: Unlimited movement.
- (2) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: January 2, 1964.

PAUL A. NICHOLSON,  
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 64-111; Filed, Jan. 3, 1964; 8:48 a.m.]

[Lemon Reg. 90]

## PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

### Limitation of Handling

#### § 910.390 Lemon Regulation 90.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910; 27 F.R. 8346), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance

with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 31, 1963.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., January 5, 1964, and ending at 12:01 a.m., P.s.t., January 12, 1964, are hereby fixed as follows:

- (i) District 1: Unlimited movement;
  - (ii) District 2: 139,500 cartons;
  - (iii) District 3: Unlimited movement.
- (2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: January 2, 1964.

PAUL A. NICHOLSON,  
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 64-110; Filed, Jan. 3, 1964; 8:48 a.m.]

## PART 916—NECTARINES GROWN IN CALIFORNIA

### Expenses for 1963-64 Fiscal Period

Pursuant to the marketing agreement and Order No. 916 (7 CFR Part 916), regulating the handling of nectarines grown in California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the proposals submitted by the Nectarine Administrative Committee (established pursuant to said marketing agreement and order), it is hereby found and determined that the expenses of said committee will amount of \$139,000.

It is, therefore, ordered, That paragraph (a) of § 916.202 Expenses and rate of assessment for the 1963-64 fiscal period (28 F.R. 6257) is hereby amended by deleting therefrom the amount \$110,308 and substituting in lieu thereof the amount \$139,000. As amended, paragraph (a) of § 916.202 reads as follows:

#### § 916.202 Expenses and rate of assessment for the 1963-64 fiscal period.

(a) *Expenses.* The expenses that are reasonable and likely to be incurred by the Nectarine Administrative Committee, established pursuant to the provisions of the aforesaid marketing agreement and order, to enable such committee to perform its functions, in accordance with the provisions thereof, during the fiscal period beginning March 1, 1963, and ending February 29, 1964, will amount to \$139,000.

It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, en-



gage in rule making procedure, and postpone the effective date of this amendatory order until 30 days after publication thereof in the *FEDERAL REGISTER* (5 U.S.C. 1001-1011) in that (1) the increase in the budget set forth above does not involve an increase in the rate of assessment heretofore established by the Secretary (28 F.R. 6257); and (2) the said committee in the performance of its duties and functions has incurred expenses in excess of those previously thought likely to be incurred. Therefore, it is essential that this amendatory action be issued immediately so that said committee can meet its obligations.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: December 31, 1963.

FLOYD F. HEDLUND,  
Director, Fruit and Vegetable  
Division, Agricultural Market-  
ing Service.

[F.R. Doc. 64-81; Filed, Jan. 3, 1964;  
8:48 a.m.]

## Title 9—ANIMALS AND ANIMAL PRODUCTS

### Chapter I—Agricultural Research Service, Department of Agriculture

#### SUBCHAPTER D—EXPORTATION AND IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS

#### PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

##### Overtime Work at Border Ports, Ocean Ports and Airports

Pursuant to the authority conferred by the Act of August 28, 1950 (64 Stat. 561; 5 U.S.C. 576) § 97.1 of Part 97, Title 9 of the Code of Federal Regulations is further amended to read as follows:

##### § 97.1 Overtime work at border ports, ocean ports and airports.

Any person, firm, or corporation having ownership, custody or control of animals, animal byproducts, or other commodities subject to inspection, certification, or quarantine under this subchapter and Subchapter G of this chapter, and who requires the services of an employee of the Animal Inspection and Quarantine Division on a holiday or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of overtime or holiday service request the Division inspector in charge to furnish inspection, certification or quarantine service during such overtime or holiday period and shall pay the Administrator of the Agricultural Research Service at the rate of \$6.40 per man hour per employee as follows: A minimum charge of

two hours shall be made for any holiday or unscheduled overtime duty performed by an employee on a day when no work was scheduled for him or which is performed by an employee on his regular work day beginning either at least one hour before his scheduled tour of duty or which is not in direct continuation of the employee's regular tour of duty. In addition, each such period of unscheduled overtime or holiday work to which the two-hour minimum charge provision applies which requires the employee involved to perform additional travel may include a commuted travel time period the amount of which shall be prescribed in administrative instructions to be issued by the Director of the Animal Inspection and Quarantine Division for the ports, stations, and areas in which the employees are located and shall be established as nearly as may be practicable to cover the time necessarily spent in reporting to and returning from such overtime or holiday duty if such travel is performed solely on account of such overtime or holiday service. With respect to places of duty within the metropolitan area of the employee's headquarters, such commuted travel period shall not exceed three hours. When inspection, quarantine or certification services are performed at locations outside the metropolitan area in which the employee's headquarters are located, one-half of the commuted travel time period applicable to the point at which the services are performed shall be charged when duties involve overtime that either begins less than one hour before the beginning of the regular tour and/or is in continuation of the regular tour of duty. It shall be administratively determined from time to time which days constitute holidays.

The foregoing amendment shall become effective January 5, 1964, when it shall supersede 9 CFR 97.1, effective July 30, 1963.

The purpose of this amendment is to increase the hourly rate for overtime services from \$6.12 to \$6.40 commensurate with salary increases provided in the Postal Service and Federal Employees Salary Act of 1962 (Public Law 87-793). It is to the benefit of those who require such overtime services, as well as the public generally, that this amendment be made effective at the earliest practicable date. Accordingly, pursuant to the provisions of section 4 of the Administrative Procedure Act (60 Stat. 238), it is found upon good cause that notice and public procedure on this amendment are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making this amendment effective less than 30 days after publication.

(64 Stat. 561; 5 U.S.C. 576)

Done at Washington, D.C., this 31st day of December 1963.

B. T. SHAW,  
Administrator,  
Agricultural Research Service.

[F.R. Doc. 64-115; Filed, Jan. 3, 1964;  
8:48 a.m.]

## Title 13—BUSINESS CREDIT AND ASSISTANCE

### Chapter I—Small Business Administration

[Rev. 4]

#### PART 121—SMALL BUSINESS SIZE STANDARDS

The Small Business Size Standards (Revision 3) (27 F.R. 9757), as amended (27 F.R. 11313, 28 F.R. 153, 2979, 3323, 5610, 6063 6678, 6823, 9344), is hereby rescinded in its entirety and the following compilation of Small Business Size Standards (Revision 3) and amendments 1 through 9 thereto are substituted in lieu thereof:

Sec.	Statutory provisions.
121.3	Purpose and method of establishing size standards.
121.3-1	Definition of terms.
121.3-2	Organization.
121.3-3	Application for size determination.
121.3-4	Protest of small business status.
121.3-5	Appeals.
121.3-6	Differentials.
121.3-7	Definition of small business for Government procurement.
121.3-8	Definition of small business for sales of Government property.
121.3-9	Definition of small business for SBA business loans.
121.3-10	Definition of small business for assistance by small business investment companies.
121.3-11	Definition of small business Government subcontractors.
121.3-12	Definition of small business for receiving priority payment under section 213(a) of the War Claims Act of 1948, as amended.
121.3-13	

AUTHORITY: §§ 121.3 to 121.3-12 issued under Pub. Law 85-536, sec. 5(b)(6), 72 Stat. 385; § 121.3-13 issued under Public Law 87-846, sec. 213(a), 72 Stat. 384.

##### § 121.3 Statutory provisions.

(a) *Small Business Act, as amended.*  
Sec. 3 For the purposes of this Act, a small business concern shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation. In addition to the foregoing criteria the Administrator, in making a detailed definition, may use these criteria, among others: Number of employees and dollar volume of business. Where the number of employees is used as one of the criteria in making such definition for any of the purposes of this Act, the maximum number of employees which a small business concern may have under the definition shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries and to take proper account of other relevant factors.

Sec. 8(b) It shall also be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary—

(6) To determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other business enterprises which are to be designated "small business concerns" for the purpose of effectuating the provisions of this Act. To carry out this purpose the Administrator, when requested to do so, shall issue in response to each such request an appropriate certifi-

<sup>1</sup> For designated ports of entry for certain animals, animal semen, poultry, and hatching eggs see 9 CFR 92, §§ 92.1 through 92.3; and for designated ports of entry for certain purebred animals see 9 CFR 151, §§ 151.1 through 151.3.



cate certifying an individual concern as a "small business concern" in accordance with the criteria expressed in this Act. Any such certificate shall be subject to revocation when the concern covered thereby ceases to be a "small business concern." Offices of the Government having procurement or lending powers, or engaging in the disposal of Federal property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administration's determination as to which enterprises are to be designated "small business concerns," as authorized and directed under this paragraph.

(b) *Small Business Investment Act of 1958, as amended.*

Sec. 103 As used in this Act—

(5) The term "small business concern" shall have the same meaning as in the "Small Business Act" \* \* \*

(c) *War Claims Act of 1948, as amended.*

Sec. 213(a) The Secretary of the Treasury shall pay out of the War Claims Fund on account of awards certified by the Commission pursuant to this title as follows and in the following order of priority:

(1) Payment in full of awards made pursuant to section 202(d) (1) and (2) and thereafter of any award made pursuant to section 202(a) to any claimant certified to the Commission by the Small Business Administration as having been, on the date of loss, damage, or destruction, a small business concern within the meaning now set forth in the Small Business Act, as amended. \* \* \*

§ 121.3-1 Purpose and method of establishing size standards.

(a) *Purpose.* This regulation defines "small business concerns" and establishes standards, criteria and procedures to determine which concerns are "small business concerns" within the meaning of the Small Business Act, as amended (hereinafter referred to as the "Act"); the Small Business Investment Act of 1958, as amended (hereinafter referred to as the "Investment Act"); and the War Claims Act of 1948, as amended (hereinafter referred to as the "War Claims Act").

(b) *Method of establishing size standards.* In defining industries, SBA follows the Standard Industrial Classification Manual, as amended, prepared and published by the Bureau of the Budget, Executive Office of the President. The Standard Industrial Classification Manual defines industries in accordance with the existing structure of the American economy. An industry is a group of establishments engaged in the same or similar lines of economic activity. The following factors are considered in formulating industry size standards: (1) Concentration of output, (2) coverage ratio, (3) primary product specialization ratio, (4) absolute number of concerns, (5) size of industry (dollar volume), (6) employment size of industry leaders, and (7) the SBA program for which the size standard is established. In certain instances, the loan standard and procurement standard may differ for the same industry. This is due to the fact that when establishing size standards for the purpose of Government procurement, an eighth factor, Govern-

ment procurement history, is used but is not a factor in formulating a size standard for the purpose of financial assistance.

§ 121.3-2 Definition of terms used in this part.

(a) "Affiliates." Concerns are affiliates of each other when either directly or indirectly (1) one concern (other than an investment company licensed under the Small Business Investment Act of 1958 or registered under the Investment Company Act of 1940, as amended), controls or has the power to control the other, or (2) a third party or parties (other than an investment company licensed under the Small Business Investment Act of 1958 or registered under the Investment Company Act of 1940, as amended), controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships.

(b) "Annual sales or annual receipts" means the annual sales or annual receipts, less returns and allowances, of a concern and its affiliates during its most recently completed fiscal year.

(c) "Appeal" means a written request for a review of a size determination made by the Director, Size Standards Division.

(d) "Area of Substantial Unemployment" for the purpose of small business size determinations means a geographical area within the United States which:

(1) Is classified by the Department of Labor either as an "Area of Substantial Unemployment" or an "Area of Substantial and Persistent Unemployment," and such classification has been listed in that Department's publication "Area Labor Market Trends" continuously from September 15, 1961, until a size determination is made; or

(2) Is individually certified by the Department of Labor as an "Area of Substantial Unemployment" and has been eligible for such certification continuously since September 15, 1961.

If an area has been removed from the publication "Area Labor Market Trends" or if an area becomes ineligible for certification at any time, such area is excluded from the above definition and cannot be reinstated for the purpose of size determinations unless it is designated as a Redevelopment Area by the Department of Commerce. (See § 121.3-2(t).)

(e) "Crude-oil capacity" means the maximum daily average crude throughput of a refinery in complete operation, with allowance for necessary shut-down time for routine maintenance, repairs, etc. It approximates the maximum daily average crude runs to stills that can be maintained for an extended period.

(f) "Certificate of Competency" means a certificate issued by SBA pursuant to the authority contained in section 8(b)(7) of the Act stating that the holder of the certificate is competent as to capacity and credit, to perform a specific Government procurement or sales contract.

(g) "Concern," except for § 121.3-13, means any business entity organized for profit with a place of business located in the United States, including, but not limited to, an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making size determinations, any business entity, whether organized for profit or not, and any foreign business entity shall be included.

(h) "Contracting Officer" means the person executing a particular contract on behalf of the Government, and any other employee who is properly designated contracting officer; the term includes the authorized representative of a contracting officer acting within the limits of his authority.

(i) "Convalescent or nursing home" means those facilities for the accommodation of convalescents or other persons who are not acutely ill or not in need of hospital care but who may require nursing care and related medical services, which facility is privately owned and operated for the purpose of obtaining profits which shall inure to the benefit of its owners, stockholders, or members.

(j) "Department store" means a concern employing twenty-five (25) or more persons engaged in the retail sale of some items in each of the following merchandise lines: (1) Furniture, home furnishings, appliances, radio and television sets; (2) a general line of apparel for the family; and (3) household linens and dry goods, provided, however, that sales within any one of the preceding merchandise lines do not exceed eighty percent (80%) of the concern's total sales and the aggregate of such merchandise lines accounts for at least fifty percent (50%) of the concern's total sales.

(k) "Gross leasable area" means the total floor area designed for tenant occupancy and exclusive use, including basements, mezzanines, and upper floors, if any, expressed in square feet measured from the center line of a joint partition and from outside wall faces.

(l) "Hospital" means a health facility duly licensed as a hospital providing inpatient medical or surgical care of the sick or injured, including obstetrics, which facility is privately owned and operated for the purpose of obtaining profits which shall inure to the benefits of its owners, stockholders, or members.

(m) "Industry" means a grouping of establishments primarily engaged in similar lines of activity as listed and described in the Standard Industrial Classification Manual, as amended (SIC Manual), prepared and published by the Bureau of the Budget, Executive Office of the President.

(n) "Medical and dental laboratory" means those facilities which provide services to doctors, dentists, hospitals, and similar health facilities, which facilities are privately owned and operated for the purpose of obtaining profits which shall inure to the benefit of its owners, stockholders, or members.

(o) "Nonmanufacturer" means any concern which in connection with a specific Government procurement contract, other than a construction or service contract, does not manufacture or produce



the products required to be furnished by such procurement. Nonmanufacturer includes a concern which can manufacture or produce the products referred to in the specific procurement but does not do so in connection with that procurement.

(p) A concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(q) "Number of employees" means that the average employment of any concern, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters. If a concern has not been in existence for four full calendar quarters, "number of employees" means the average employment of such concern and its affiliates during the period such concern has been in existence based on the number of persons employed during the pay period ending nearest the last day of each month.

(r) "Protest" means a statement in writing from any responsive bidder or offerer having a valid interest in whether or not a bidder on a Government procurement or Government disposal contract is a small business within the meaning of this part. Such statement shall contain the basis for the protest, together with specific detailed evidence supporting the protestant's claim that such bidder is not a small business. A complaint received after award of a contract or a complaint received that a concern is not a small business, but which does not meet the requirements of this subsection, will not be considered a "protest" and will not be acted upon.

(s) "Reconsideration" means a review by the Director, Size Standards Division, on written request by an interested party of a prior size determination made by an SBA regional director or his delegate based on new information furnished with the request or upon error of such regional director or delegate in making such determination.

(t) "Redevelopment Area" for the purpose of small business size determinations means a geographical area within the United States which has been designated as a "Redevelopment Area" in accordance with the Area Redevelopment Act (Pub. Law 87-27, sec. 5, 75 Stat. 48).

(u) "Shopping center" means a group of commercial establishments planned, developed, owned, and managed as a unit with off-street parking provided on the property.

(v) "Size determination" means a ruling by SBA that a concern is or is

not, or was or was not a small business within the meaning of this part.

(w) "United States" as used in this regulation includes the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

#### **§ 121.3-3 Organization of the Size Standards Division.**

(a) *Authority.* The Director, Size Standards Division, shall:

(1) Develop and recommend small business size standards to the Administrator for promulgation;

(2) Determine the size status of concerns;

(3) Conduct industry hearings pertaining to size matters;

(4) Issue interpretations of the Size Standards Regulation;

(5) Consider and determine written petitions objecting to or requesting amendment or rescission of a published size standard;

(6) Establish procedures for the implementation of all size programs; and

(7) Perform such other related functions as may be appropriate to effectuate the SBA size program; and

(8) Determine in which industries, as set forth in the SIC Manual, products or services are classified.

(b) *Delegation of functions.* The Director, Size Standards Division, may delegate to SBA regional directors authority to make size determinations.

#### **§ 121.3-4 Application for size determination.**

(a) *Original size determinations.* (1)

Applications for size determinations for any purpose shall be submitted on SBA Form 355, Application for Small Business Size Determination, in duplicate, to any SBA field office serving the area in which the applicant's principal office is located. SBA Form 355 shall be completed and supporting materials shall be attached thereto. Applications for size determinations made by either a small business investment company or an applicant for assistance from such an investment company shall be submitted on SBA Form 480, together with SBA Form 355. Detailed instructions for completing SBA Form 355 and SBA Form 480 are attached thereto. Copies of such forms may be obtained from any SBA field office or from the Small Business Administration, Washington, D.C., 20416.

(2) In cases where a regional director has been delegated authority to determine the size status of a concern, he or his delegate shall cause the application to be reviewed to insure that all facts are stated adequately. Thereafter, the regional director or his delegate shall determine the status of the concern and shall promptly notify the applicant and other interested persons of his decision in writing.

(3) In cases where the regional director has not been delegated authority to determine the size status of a concern, he shall cause the application to be reviewed to insure that all facts are stated adequately and SBA Form 355 is completed. Thereafter, the regional director or his delegate shall transmit the SBA Form 355 and all supporting

documents, together with his recommendations concerning the size status of the concern, to the Size Standards Division. The Director, Size Standards Division, shall then determine the size status of the concern. He shall promptly notify the appropriate parties of his decision in writing.

(b) *Reconsideration of size determinations.* (1) If the size determination is one authorized to be made in the first instance by a regional director or his delegate and the determination has been so made, the applicant or other interested party may request reconsideration of this determination by filing such request, together with any additional information, with the regional office in which the determination was made. The regional director or his delegate shall review the additional information and, thereafter, shall submit the request for reconsideration and the file, together with a complete SBA Form 355, to the Director, Size Standards Division, who shall decide the request for reconsideration and promptly notify the appropriate parties of his decision in writing.

(2) If the Director, Size Standards Division, has made the size determination, whether initially or after determination by the regional director or his delegate, such determination shall be final except that an appeal from such determination may be taken by following the procedure set forth in § 121.3-6.

#### **§ 121.3-5 Protest of small business status.**

(a) *How to protest.* Any responsive bidder or offerer may, prior to award, question the small business status of any apparently low bidder or offerer by sending a written protest, as defined in § 121.3-2(r), to the contracting officer responsible for the particular procurement. Any contracting officer who receives such protest or who wishes to question the small business status of a bidder or offerer himself shall forward such protest record (or submit a written protest, as defined in § 121.3-2(r)) to the SBA regional office serving the area in which the protested concern is located.

(b) *Notification of protest.* Upon receipt of such protest, the SBA regional director or his delegate shall immediately notify the contracting officer and the protestant of the date such protest has been received and that the size of the concern being protested is being considered by SBA. The regional director or his delegate shall also advise the protested bidder or offerer of the receipt of the protest and shall forward to the protested bidder or offerer a copy of the protest and a blank SBA Form 355, Application for Small Business Size Determination, by Certified Mail, Return Receipt Requested. The bidder or offerer shall be advised, in writing, that: (1) It must, within three (3) days after receipt of the copy of the protest and SBA Form 355, file the completed form as directed by SBA, (2) it must attach thereto a statement in answer to the allegations of the letter of protest, together with evidence to support such position, and (3) if it does not submit the completed SBA Form 355, SBA will rule



that the protested concern is other than a small business.

(c) *Notification of determination.* After receipt of a protest and responses thereto, SBA shall determine the small business status of the protested bidder or offerer and notify the contracting officer, the protestant, and the protested bidder or offerer of its decision within ten working days, if possible.

#### § 121.3-6 Appeals.

(a) *Appeals organization.* (1) The Size Appeals Board is the representative of the Administrator for reviewing size appeals.

(2) The Size Appeals Board shall consist of at least three members designated by the Administrator, one of whom shall be designated as Chairman. Alternate members shall also be designated by the Administrator. The Size Appeals Board is authorized to conduct such proceedings as it determines appropriate to enable it to consider appeals and recommend to the Administrator decisions thereon.

(b) *Method of appeal.*—(1) *Who may appeal.* An appeal may be taken by any concern or other interested party which has:

(i) Protested the small business status of a concern pursuant to § 121.3-5 and whose protest has been denied by the Director, Size Standards Division;

(ii) Upon reconsideration, been denied small business status by a determination of the Director pursuant to § 121.3-4; or

(iii) Been adversely affected by a decision of the Director pursuant to §§ 121.3-4 and 121.3-5.

(2) *Where to appeal.* Written Notices of Appeal shall be addressed to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C., 20416.

(3) *Time for appeal.* Because of the urgency of pending procurements, appeals in such cases shall be mailed or delivered to the Chairman, Size Appeals Board, within five (5) days after receipt of the determination of the Director, Size Standards Division. All other appeals shall be so mailed or delivered within thirty (30) days after receipt of such determination. Extension of the period within which appeals can be filed may be granted in the discretion of the Chairman of the Size Appeals Board, but only for good cause.

(4) *Grounds for appeal.* Jurisdiction of the Board shall extend only to consideration of allegations that the Director, Size Standards Division, has misapplied the published Size Standards Regulation. The Board shall not consider appeals based on an allegation that a published regulation should be changed. Requests for a change in such regulation shall be made to the Director, Size Standards Division, Small Business Administration, Washington, D.C., 20416.

(5) *Notice of appeal.* No particular form is prescribed for the Notice of Appeal. The following information shall be included therein to avoid time consuming delays and necessity for further correspondence:

(i) Name and address of concern on which the size determination was made;

(ii) The character of the determination from which appeal is taken and its date;

(iii) If applicable, the IFB or contract number and date, and the name and address of the contracting officer;

(iv) A concise and direct statement of the reasons why the decision of the Director, Size Standards Division, is alleged to be erroneous;

(v) Documentary evidence in support of such allegations; and

(vi) Action sought by the appellant.

(c) *Notice to interested parties.* The Size Appeals Board shall promptly acknowledge receipt of the Notice of Appeal and shall send a copy of such Notice of Appeal to the Director, Size Standards Division, the contracting officer if a pending procurement is involved, and other interested parties.

(d) *Statement of interested parties.* After receipt of a copy of appellant's Notice of Appeal, interested parties may file in duplicate with the Board, a statement as to why the appeal should or should not be denied. Such statement shall be accompanied by appropriate evidence. Copies of such statements and appropriate evidence will be furnished to the appellant. Such statements and supporting evidence shall be mailed or delivered to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C., 20416, within five (5) days of the receipt of the copy of Notice of Appeal unless an extension is for cause granted by the Chairman of the Size Appeals Board.

(e) *Consideration by the Size Appeals Board.* The Size Appeals Board shall consider the appeal on the written submissions of the appellant, or may, in its discretion, permit oral presentations by interested parties. The Board shall promptly recommend in writing to the Administrator a proposed decision which shall state the reasons for the recommendation.

(f) *Decision of the Administrator.* The Administrator's decision shall be predicated upon the entire record after giving such weight to the recommendation of the Size Appeals Board as he shall deem appropriate provided, however, that should he not concur with the recommendation of the Size Appeals Board, he shall state in writing the basis for his findings and conclusions.

(g) *Notification of final decision.* The Chairman shall promptly notify, in writing, the appellant and the other interested parties of the Administrator's decision, together with the reasons therefor.

#### § 121.3-7 Differentials.

(a) *Alaska.* If an applicant for a size determination is a concern located in Alaska, then, whenever "annual sales or annual receipts" are used in any size definition contained in this part, said dollar limitation is increased by twenty-five percent (25%) of the amount set forth therein.

(b) *Substantial unemployment and redevelopment areas.*—(1) *Business loans under the Small Business Act.* Notwithstanding any other provisions of this part, the applicable size standards for

the purpose of financial assistance under section 7(a) of the Act are increased by twenty-five percent (25%) whenever the concern maintains or operates a plant, facility, or other business establishment within an Area of Substantial Unemployment or Redevelopment Area and agrees to use the financial assistance within such area or, if it does not maintain or operate a plant, facility, or other business establishment within an Area of Substantial Unemployment or Redevelopment Area, agrees to utilize the financial assistance for the establishment and/or operation of a plant, facility, or other business establishment within such area.

(2) *Small business investment companies and development companies.* Notwithstanding any other provision of this part, the size standard for a small business concern receiving assistance from a small business investment company or receiving assistance from a development company in connection with a section 501 or section 502 loan are increased by twenty-five percent (25%) whenever such concern maintains or operates a plant, facility, or other business establishment within an Area of Substantial Unemployment or Redevelopment Area and agrees to use such assistance within such area or, if it does not maintain or operate a plant, facility, or other business establishment within an Area of Substantial Unemployment or Redevelopment Area, agrees to utilize such assistance in connection with the establishment and/or operation of a plant, facility, or other business establishment in such area.

(3) *Government procurement assistance, sales of Government property and Government subcontracting.* This paragraph is not applicable to size determinations for the purpose of Government procurement assistance, sales of Government property, or Government subcontracting.

#### § 121.3-8 Definition of small business for Government procurement.

A small business for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and can further qualify under the criteria set forth below. When computing the size status of a bidder or offerer, the number of employees, annual sales or receipts, or other applicable standards of the bidder or offerer and all of its affiliates shall be included. In the submission of a bid or proposal on a Government procurement, a concern which meets the criteria provided in this section may represent that it is a small business. In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular procurement involved. For the purpose of a procurement of a product classified into two or more industries with a different size standards, the smallest of such size standards shall be used in determining a bidder's size status. If a procurement



calls for more than one item, the bidder must meet the size standard for each item for which it submits a bid.

(a) *Construction.* Any concern bidding on a contract for construction, alteration, or repair (including painting and decorating) of buildings, bridges, roads, or other real property is classified:

(1) As small if its average annual receipts for its preceding three fiscal years do not exceed \$7½ million.

(2) As small if it is bidding on a contract for dredging and its average annual receipts for its preceding three fiscal years do not exceed \$5 million.

(b) *Manufacturing.* Any concern bidding on a contract for a product it manufactures is classified:

(1) As small if it is bidding on a contract for food canning and preserving and its number of employees does not exceed 500 persons, exclusive of agricultural labor as defined in section (k) of the Federal Unemployment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

(2) As small if it is bidding on a contract for petroleum, other than lubricants and miscellaneous petroleum products, and its number of employees does not exceed 1,000 persons and it does not have more than 30,000 barrels-per-day crude-oil capacity from owned or leased facilities.

(3) As small if it is bidding on a contract for a product classified within an industry set forth in Schedule B of this part and its number of employees does not exceed the size standard established for that industry.

(4) As small if it is bidding on a contract for a product classified within an industry not set forth in Schedule B of this part and its number of employees does not exceed 500 persons.

(c) *Nonmanufacturing.* [Reserved]

NOTE: On April 5, 1963, there was published in the FEDERAL REGISTER (28 F.R. 3358) a proposed new definition of a small business non-manufacturer. Interested persons were requested to file written comments. Until such time as a new definition of a small business nonmanufacturer is adopted, the definition as contained in § 121.3-8(b) (27 F.R. 9757, published October 3, 1962) shall be applicable. § 121.3-8(b): *Provided*, That "Any concern which submits a bid or offer in its own name, other than a construction or service contract, but which proposes to furnish a product not manufactured by said bidder or offeror, is deemed to be a small business concern when:

(1) It is a small business concern within the meaning of subsection (a) of this section [its number of employees does not exceed 500 persons], and

(2) In the case of Government procurement reserved for or involving the preferential treatment of small businesses, such non-manufacturer shall furnish in the performance of the contract the products of a small business manufacturer or producer which products are manufactured or produced in the United States; *Provided, however*, If the goods to be furnished are wool, worsted, knitwear, duck, webbing, and thread (spinning and finishing), nonmanufacturers (dealers and converters) shall furnish such products which have been manufactured or produced by a small weaver (small knitter for knitwear) and, if finishing is required, by a small finisher."

(d) *Research, development, and testing.* Any concern bidding on a contract

for research, development, and/or testing is classified:

(1) As small if it is bidding on a contract for research and/or development which requires delivery of a manufactured product and (i) it qualifies as a small business manufacturer within the meaning of § 121.3-8(b) for the industry into which the product is classified, or (ii) it qualifies as a small business non-manufacturer within the meaning of § 121.3-8(c).

(2) As small if it is bidding on a contract for research and/or development which does not require delivery of a manufactured product or on a contract for testing and its number of employees does not exceed 500 persons.

(e) *Services.* Any concern bidding on a contract for services, not elsewhere defined in this section, is classified as small if its average annual sales or receipts for its preceding three fiscal years do not exceed \$1 million.

(f) *Transportation.* Any concern bidding on a contract for passenger or freight transportation, not elsewhere defined in this section, is classified:

(1) As small if its number of employees does not exceed 500 persons.

(2) As small if it is bidding on a contract for air transportation and its number of employees does not exceed 1,000 persons.

(3) As small if it is bidding on a contract for trucking (local and long distance), packing and crating, and/or freight forwarding, and its annual receipts do not exceed \$3 million.

NOTE: Under present SBA policy, no concern will be denied small business status for the purpose of Government procurement solely because of its contractual relationship with a large interstate van line: *Provided*, That its annual receipts have not exceeded \$3 million during the concern's most recently completed fiscal year: *And provided further*, No more than 50 percent of such annual receipts are directly attributable to the applicant's relationship with an interstate van line. When applying for a small business size determination, the applicant, at the time of filing its application, shall submit therewith documentary evidence showing the percentage of its annual receipts attributable to its relationship with an interstate van line.

#### § 121.3-9 Definition of small business for sales of Government property.

In the submission of a bid or proposal for the purchase of Government-owned property, a concern which meets the criteria provided in this section may represent that it is a small business. In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular sale involved.

(a) *Sales of Government-owned property other than timber.* A small business concern for the purpose of the sale of Government-owned property, other than timber, is a concern, including its affiliates, which is independently owned and operated, is not dominant in its field of operation, and can further qualify under the following criteria:

(1) *Manufacturers.* Any concern which is primarily engaged in manu-

facturing is small if its number of employees does not exceed 500 persons.

(2) *Other than manufacturers.* Any concern which is primarily not a manufacturer (except as specified in subparagraph (3) of this paragraph) is small if its annual sales or annual receipts for its preceding three fiscal years do not exceed \$5 million.

(3) *Stockpile purchasers.* Any concern primarily engaged in the purchase of materials which are not domestic products is small if its average annual sales or annual receipts for its preceding three fiscal years do not exceed \$25 million.

(b) *Sales of Government-owned timber.* (1) In connection with the sale of Government-owned timber a small business is a concern that: (i) Is primarily engaged in the logging or forest products industry; (ii) is independently owned and operated; (iii) is not dominant in its field of operation; and, (iv) together with its affiliates, its number of employees does not exceed 250 persons.

(2) In the case of Government sales of timber reserved for or involving preferential treatment of small businesses, when the Government timber being purchased is to be resold, a concern is a small business when: (i) It is a small business within the meaning of subparagraph (1) of this paragraph, and (ii) it agrees that it will not sell more than thirty per cent (30 per cent) of such timber to a concern which does not qualify under subparagraph (1) of this paragraph as a small business, unless an exemption is granted on sales of mixed stumpage of hardwood and softwood species.

(3) In the case of Government sales reserved for or involving preferential treatment of small businesses, when the Government timber purchased is not to be resold in the form of saw logs to be manufactured into lumber and timbers, a concern is a small business when: (i) It meets the criteria contained in subparagraph (1) of this paragraph, and (ii) it agrees that in manufacturing lumber or timbers from such saw logs cut from the Government timber, it will do so only with its own facilities or those of concerns that qualify under subparagraph (1) of this paragraph as a small business.

#### § 121.3-10 Definition of small business for SBA business loans.

A small business concern for the purpose of receiving an SBA loan is a concern, including its affiliates, which is independently owned and operated, is not dominant in its field of operation, and can further qualify under the criteria set forth below. A concern which is a small business under § 121.3-8 which has applied for or received a Certificate of Competency is a small business eligible for an SBA loan to finance the contract covered by the Certificate of Competency. If no standard for an industry, field of operation, or activity has been set forth in this section, a concern seeking a size determination shall submit SBA Form 355 to the Director, Size Standards Division, Washington, D.C. 20416. If an applicant for an SBA business loan is engaged in the production



of a number of products or the providing of a variety of services or other activities which are classified into different industries, the appropriate standard to be used is that which has been established for the industry in which it is primarily engaged. An applicant's primary industry is that which produced the greatest percentage of gross sales or receipts for the past fiscal year. When computing the size status of an applicant, its affiliates' number of employees, annual sales or receipts, or other applicable standards shall be included.

(a) **Construction.** Any construction concern is small if its average annual receipts do not exceed \$5 million for the preceding three fiscal years.

(b) **Manufacturing.** Any manufacturing concern is classified:

(1) As small if its number of employees does not exceed 250 persons;

(2) As large if its number of employees exceeds 1,000 persons;

(3) Either as small or large depending on its industry and in accordance with the employment size standards set forth in Schedule "A" of this part, if its number of employees exceeds 250 persons, but not more than 1,000 persons;

(4) As small if it is engaged in the food canning and preserving industry and its number of employees does not exceed 500 persons exclusive of agricultural labor as defined in subsection (k) of the Federal Unemployment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

(c) **Retail.** Any retailing concern is classified:

(1) As small if its annual sales do not exceed \$1 million;

(2) As small if it is engaged in making retail sales of groceries and fresh meats and its annual sales do not exceed \$2 million;

(3) As small if it is engaged in making retail sales of new or used motor vehicles and its annual sales do not exceed \$3 million;

(4) As small if it is engaged in the operation of a department store and its annual sales do not exceed \$2 million.

(d) **Services.** Any service concern is classified:

(1) As small if its annual receipts do not exceed \$1 million;

(2) As small if it is engaged in the hotel and motel industry and its annual receipts do not exceed \$2 million;

(3) As small if it is engaged in the power laundry industry and its annual receipts do not exceed \$2 million;

(4) As small if it is engaged in the trailer courts and parks industry and its annual receipts do not exceed \$100,000; *Provided*, That a minimum of fifty percent (50%) of the annual receipts is derived from the rental of space to tourist trailers for periods not in excess of thirty (30) days;

(5) As small if it is engaged in owning and operating a hospital and its capacity does not exceed 100 beds (excluding cribs and bassinets);

(6) As small if it is engaged in owning and operating a convalescent or nursing home and its annual receipts do not exceed \$1 million;

(7) As small if it is engaged in owning and operating a medical or dental labo-

ratory and (i) it is operated in connection with an eligible proprietary hospital, or (ii) it is not operated in connection with an eligible proprietary hospital and its annual receipts do not exceed \$1 million.

(e) **Shopping centers.** (1) Any concern engaged in operating shopping centers is small if (i) it does not have assets exceeding \$5 million, (ii) it does have net worth in excess of \$2½ million, (iii) it does not have an average net income, after Federal income taxes, for the preceding two fiscal years in excess of \$250,000 (average net income to be computed without benefit of any carry-over loss), and (iv) it does not lease more than 25 percent of the gross leasable area to concerns which do not meet the small business definitions contained in this section.

(2) For the purpose of size determinations, shopping center operators will not be considered affiliated with their tenants merely because of lease agreements.

(f) **Transportation and warehousing.** Any concern primarily engaged in passenger and freight transportation or warehousing is classified:

(1) As small if its annual receipts do not exceed \$1 million;

(2) As small if it is primarily engaged in the air transportation industry and its number of employees does not exceed 1,000 persons;

(3) As small if it is primarily engaged in the storage of grain, it does not have more than one million bushels capacity in owned and leased facilities, and its annual receipts do not exceed \$1 million;

(4) As small if it is primarily engaged in trucking, warehousing, packing and crating and/or freight forwarding and its annual receipts do not exceed \$3 million.

**NOTE:** Under present SBA policy, no concern will be denied small business status for the purpose of SBA financial assistance solely because of its contractual relationship with a large interstate van line: *Provided*, That its annual receipts have not exceeded \$3 million during the concern's most recently completed fiscal year. When applying for a small business loan, the applicant, at the time of filing its application, shall submit therewith documentary evidence showing the amount of its annual receipts attributable to its relationship with an interstate van line.

(g) **Wholesale.** Any wholesaling concern is small if its annual sales do not exceed \$5 million. Any wholesaling concern also engaged in manufacturing is not a "small business concern" unless it so qualifies under both the manufacturing and wholesaling standards.

#### § 121.3-11 Definition of small business for assistance by small business investment companies.

A small business concern for the purpose of receiving financial or other assistance from small business investment companies is a concern which:

(a) Together with its affiliates, is independently owned and operated, is not dominant in its field of operation, does not have assets exceeding \$5 million, does not have net worth in excess of \$2½ million, and does not have an average net income, after Federal income taxes, for

the preceding two years in excess of \$250,000 (average net income to be computed without benefit of any carry-over loss); or

(b) Qualifies as a small business concern under § 121.3-10.

#### § 121.3-12 Definition of small business Government subcontractors.

(a) Any concern in connection with subcontracts of \$2,500 or less which relate to Government procurements will be considered a small business concern if, including its affiliates, its number of employees does not exceed 500 persons.

(b) Any concern in connection with subcontracts exceeding \$2,500 which relate to Government procurements will be considered a small business concern if it qualifies as such under § 121.3-8: *Provided, however*, Until a definition of a small business nonmanufacturer is adopted under § 121.3-8(c), a nonmanufacturer will be considered as small business for the purpose of Government subcontracting if, including its affiliates, its number of employees does not exceed 500 persons.

#### § 121.3-13 Definition of small business for receiving priority payment under section 213(a) of the War Claims Act of 1948, as amended.

(a) **Small Business Claimant.** A small business claimant for the purpose of receiving priority payment from the Secretary of the Treasury under section 213(a) of the War Claims Act of 1948, as amended, is a concern which on the date of loss, damage, or destruction was a small business concern within the meaning of § 121.3-10 in effect on October 22, 1962 (27 F.R. 9757).

(b) **Request for size determination.** The Director, Size Standards Division, shall, only upon the request of the Foreign Claims Settlement Commission of the United States, determine the size status of a claimant: *Provided, however*, That said Commission certified to SBA that the claimant qualifies under section 202(a) of the War Claims Act of 1948, as amended.

**Effective date.** This revision shall become effective upon publication in the FEDERAL REGISTER.

Dated: December 26, 1963.

EUGENE P. FOLEY,  
Administrator.

#### SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING

(The following size standards are to be used when determining the size status of SBA business loan applicants, and as alternate standards or sections 501 and 802 loans, and SBIC assistance)

Census classification Code	Industry	Employment size standard (number of employees) <sup>1</sup>
	Major Group 23—Apparel and Related Products.....	250
	Major Group 28—Chemicals and Allied Products.....	1000
2812	Alkalies and chlorine.....	
2879	Agricultural chemicals, not elsewhere classified.....	500
2873	Agricultural pesticides.....	500
2831	Biological products.....	250
2885	Carbon, black.....	500
2823	Cellulose man-made fibers.....	1000



## RULES AND REGULATIONS

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification Code	Industry	Employment size standard (number of employees) <sup>1</sup>
2899	Major Group 28—Chemicals Allied Products—Continued	
2814	Chemicals and chemical preparations, not elsewhere classified.	250
2815	Cyclic (coal tar) crudes.	500
2892	Dyes, dye (cyclic) intermediates, and organic pigments (lakes and toners).	750
2894	Explosives.	750
2871	Fatty acids.	500
2872	Fertilizers.	500
2873	Fertilizers, mixing only.	500
2891	Glue and gelatin.	250
2861	Gum and wood chemicals.	500
2813	Industrial gases.	1000
2819	Industrial inorganic chemicals, not elsewhere classified.	750
2818	Industrial organic chemicals, not elsewhere classified.	1000
2816	Inorganic pigments.	1000
2833	Medicinal chemicals and botanical products.	750
2851	Paints, varnishes, lacquers, and enamels.	250
2844	Perfumes, cosmetics, and other toilet preparations.	500
2834	Pharmaceutical preparations.	750
2821	Plastics materials, synthetic resins, and nonvulcanizable elastomers.	750
2893	Printing ink.	250
2852	Putty, caulking compounds, and allied products.	250
2841	Soap and other detergents, except specialty cleaners.	750
2842	Specialty cleaning, polishing, and sanitation preparations, except soap and detergents.	500
2843	Surface active agents, finishing agents, sulfonated oils and assistants.	250
2824	Synthetic organic fibers, except cellulosic.	1000
2822	Synthetic rubber (vulcanizable elastomers).	1000
	Major Group 36—Electrical Machinery, Equipment and Supplies:	
3624	Carbon and graphite products.	750
3672	Cathode ray picture tubes.	750
3643	Current carrying wiring devices.	500
3634	Electric housewares and fans.	750
3641	Electric lamps.	1000
3611	Electric measuring instruments and test equipment.	500
3619	Electric transmission and distribution equipment, not elsewhere classified.	500
3694	Electrical equipment for internal combustion engines.	750
3629	Electrical industrial apparatus, not elsewhere classified.	500
3699	Electrical machinery, equipment, and supplies, not elsewhere classified.	500
3679	Electronic components and accessories, not elsewhere classified.	500
3639	Household appliances, not elsewhere classified.	500
3631	Household cooking equipment.	750
3633	Household laundry equipment.	1000
3632	Household refrigerators and home and farm freezers.	1000
3635	Household vacuum cleaners.	750
3622	Industrial controls.	750
3642	Lighting fixtures.	250
3621	Motors and generators.	1000
3644	Noncurrent carrying wiring devices.	500
3652	Photograph records.	750
3612	Power, distribution, and specialty transformers.	750
3692	Primary batteries, dry and wet.	1000
3651	Radio and television receiving sets, except communication types.	750
3671	Radio and television receiving type electron tubes, except cathode ray.	1000
3662	Radio and television transmitting, signaling, and detection equipment and apparatus.	750
3693	Radiographic X-ray, fluoroscopic X-ray, therapeutic X-ray, and other X-ray apparatus and tubes.	500
3636	Sewing machines.	750
3691	Storage batteries.	500

See footnotes at end of table.

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification Code	Industry	Employment size standard (number of employees) <sup>1</sup>
3613	Major Group 36—Electrical Machinery, Equipment and Supplies—Continued	
3661	Switchgear and switchboard apparatus.	750
3673	Telephone and telegraph apparatus.	1,000
3623	Transmitting, industrial, and special purpose electron tubes.	750
	Welding apparatus.	250
	Major Group 34—Fabricated Metal Products, Except Ordnance, Machinery, and Transportation Equipment:	
3449	Architectural and miscellaneous metal work.	250
3452	Bolts, nuts, screws, rivets and washers.	500
3479	Coating, engraving, and allied services, not elsewhere classified.	250
3496	Collapsible tubes.	250
3421	Cutlery.	500
3471	Electroplating, plating, polishing, anodizing and coloring.	250
3431	Enameled iron and metal sanitary ware.	750
3499	Fabricated metal products, not elsewhere classified.	250
3498	Fabricated pipe and fabricated pipe fittings.	250
3443	Fabricated plate work (boiler shops).	250
3441	Fabricated structural steel.	250
3423	Hand and edge tools, except machine tools and hand saws.	250
3425	Hand saws and saw blades.	250
3429	Hardware, not elsewhere classified.	250
3433	Heating equipment, except electric.	500
3411	Metal cans.	1,000
3442	Metal doors, sash, frames, molding, and trim.	250
3497	Metal foil and leaf.	500
3491	Metal shipping barrels, drums, kegs, and pails.	500
3461	Metal stampings.	250
3481	Miscellaneous fabricated wire products.	250
3432	Plumbing fixture fittings and trim (brass goods).	500
3492	Safes and vaults.	500
3451	Screw machine products.	250
3444	Sheet metal work.	250
3493	Steel springs.	500
3494	Valves and pipe fittings, except plumbers' brass goods.	500
	Major Group 20—Food and Kindred Products:	
2095	Animal and marine fats and oils, except grease and tallow.	250
2063	Beet sugar.	750
2052	Biscuit, crackers, and pretzels.	750
2045	Blended and prepared flour.	500
2086	Bottled and canned soft drinks and carbonated waters.	250
2051	Bread and other bakery products, except biscuit, crackers, and pretzels.	250
2071	Candy and other confectionery products.	250
2061	Cane sugar, except refining only.	250
2062	Cane sugar refining.	750
2031	Canned and cured sea foods.	250
2033	Canned fruits, vegetables, preserves, jams, and jellies.	500
2032	Canned specialties.	1000
2043	Cereal preparations.	500
2073	Chewing gum.	500
2072	Chocolate and cocoa products.	500
2023	Condensed and evaporated milk.	500
2091	Cottonseed oil mills.	250
2021	Creamery butter.	250
2085	Distilled, rectified, and blended liquors.	750
2034	Dried and dehydrated fruits and vegetables.	500
2087	Flavoring extracts and flavoring syrups, not elsewhere classified.	500
2041	Flour and other grain mill products.	500
2026	Fluid milk.	500
2099	Food preparations, not elsewhere classified.	250
2036	Fresh or frozen packaged fish.	250
2037	Frozen fruits, fruit juices, vegetables, and specialties.	500

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification Code	Industry	Employment size standard (number of employees) <sup>1</sup>
	Major Group 20—Food and Kindred Products—Continued	
2094	Grease and tallow.	250
2024	Ice cream and frozen desserts.	500
2098	Macaroni, spaghetti, vermicelli, and noodles.	250
2083	Malt.	250
2082	Malt liquors.	500
2097	Manufactured ice.	250
2011	Meat packing plants.	500
2022	Natural cheese.	250
2035	Pickled fruits and vegetables; vegetable sauces and seasonings; salad dressings.	250
2015	Poultry and small game dressing and packing, wholesale.	250
2042	Prepared feeds for animals and fowls.	250
2044	Rice milling.	250
2013	Sausages and other prepared meat products.	500
2096	Shortening, table oils, margarine and other edible fats and oils, not elsewhere classified.	750
2092	Soybean oil mills.	500
2025	Special dairy products.	250
2093	Vegetable oil mills, except cottonseed and soybean.	1000
2046	Wet corn milling.	750
2084	Wines, brandy, and brandy spirits.	250
	Major Group 25—Furniture and Fixtures:	
2599	Furniture and fixtures, not elsewhere classified.	250
2519	Household furniture, not elsewhere classified.	250
2515	Mattresses and bedsprings.	250
2514	Metal household furniture.	250
2522	Metal office furniture.	500
2542	Metal partitions, shelving, lockers, and office and store fixtures.	250
2531	Public building and related furniture.	250
2591	Venetian blinds and shades.	250
2511	Wood household furniture, except upholstered.	250
2512	Wood household furniture, upholstered.	250
2521	Wood office furniture.	250
2541	Wood partitions, shelving, lockers, and office and store fixtures.	250
	Major Group 31—Leather and Leather Products:	
3131	Boot and shoe cut stock and findings.	250
3141	Footwear, except house slippers and rubber footwear.	500
3142	House slippers.	500
3121	Industrial leather belting and packing.	250
3151	Leather dress, semidress, and work gloves.	250
3199	Leather goods, not elsewhere classified.	250
3111	Leather tanning and finishing.	250
3161	Luggage.	250
3172	Personal leather goods, except handbags and purses.	250
3171	Women's handbags and purses.	250
	Major Group 24—Lumber and Products, Except Furniture:	
	Major Group 35—Machinery, except Electrical:	
3581	Automatic merchandising machines.	250
3562	Ball and roller bearings.	750
3564	Blowers, exhaust and ventilating fans.	250
3582	Commercial laundry, dry cleaning, and pressing machines.	250
3571	Computing and accounting machines, including cash registers.	1000
3531	Construction machinery and equipment.	750
3535	Conveyors and conveying equipment.	250
3534	Elevators and moving stairways.	500
3522	Farm machinery and equipment.	500
3551	Food products machinery.	250
3569	General industrial machinery and equipment, not elsewhere classified.	250
3536	Hoists, industrial cranes, and monorail systems.	50



SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification Code	Industry	Employment size standard (number of employees) <sup>1</sup>
3565	Major Group 35—Machinery, except Electrical—Continued	250
3567	Industrial patterns	250
3537	Industrial process furnaces and ovens	250
3519	Industrial trucks, tractors, trailers, and stackers	250
3501	Internal combustion engines, not elsewhere classified	1000
3545	Machine shops, jobbing and repair	250
3541	Machine tool accessories and measuring devices	250
3542	Machine tools, metal cutting types	500
3599	Machine tools, metal forming types	500
3586	Machinery and parts, except electrical, not elsewhere classified	250
3566	Measuring and dispensing pumps	500
3548	Mechanical power transmission equipment, except ball and roller bearings	500
3532	Metalworking machinery, except machine tools	500
3579	Mining machinery and equipment, except oil field machinery and equipment	500
3533	Office machines, not elsewhere classified	500
3554	Oil field machinery and equipment	500
3555	Paper industries machinery	250
3561	Printing trades machinery and equipment	500
3585	Pumps, air and gas compressors, and pumping equipment	500
3576	Refrigerators; refrigeration machinery, except household; and complete air conditioning units	750
3589	Scales and balances, except laboratory	250
3544	Service industry machines, not elsewhere classified	250
3550	Special dies and tools, die sets, gages and fixtures	250
3511	Special industry machinery, not elsewhere classified	250
3552	Steam engines; steam, gas, and hydraulic turbines; and steam, gas, and hydraulic turbine generator set units	1000
3572	Textile machinery	250
3584	Typewriters	1000
3553	Vacuum cleaners, industrial	250
3561	Woodworking machinery	250
3561	Major Group 39—Miscellaneous Manufacturing Industries:	
3563	Brooms and brushes	250
3564	Buttons	250
3565	Candles	250
3543	Carbon paper and inked ribbons	250
3561	Children's vehicles, except bicycles	250
3561	Costume jewelry and costume novelties, except precious metal	250
3542	Dolls	250
3562	Feathers, plumes, and artificial flowers	250
3592	Furs, dressed and dyed	250
3541	Games and toys, except dolls and children's vehicles	250
3512	Jewelers' findings and materials	250
3511	Jewelry, precious metal	250
3587	Lamp shades	250
3513	Lapidary work and cutting and polishing diamonds	250
3562	Lead pencils, crayons, and artists' materials	250
3562	Linoleum, asphalted-felt-base, and other hard surface floor coverings, not elsewhere classified	750
3599	Manufacturing industries, not elsewhere classified	250
3563	Marking devices	250
3563	Matches	500
3561	Martians' goods	250
3564	Musical instruments and parts	500
3561	Needles, pins, hooks and eyes, and similar notions	250
3561	Pens, pen points, fountain pens, ball point pens, mechanical pencils and parts	500

See footnotes at end of table.

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification Code	Industry	Employment size standard (number of employees) <sup>1</sup>
3993	Major Group 39—Miscellaneous Manu. Ind.—Continued	250
3914	Signs and advertising displays	500
3949	Silverware and plated ware	250
3995	Sporting and athletic goods, not elsewhere classified	250
1922	Umbrellas, parasols, and canes	250
1929	Major Group 19—Ordnance and Accessories:	
1921	Ammunition loading and assembling	250
1911	Ammunition, not elsewhere classified	250
1999	Artillery ammunition	250
1941	Guns, howitzers, mortars, and related equipment	250
1951	Ordnance and accessories, not elsewhere classified	250
1961	Sighting and fire control equipment	250
1931	Small arms	1000
2643	Small arms ammunition	1000
2661	Tanks and tank components	1000
2649	Major Group 26—Paper and Allied Products:	
2653	Bags, except textile bags	500
2645	Building paper and building board mills	750
2642	Converted paper and paperboard products, not elsewhere classified	500
2645	Corrugated and solid fiber boxes	250
2642	Die cut paper and paperboard; and cardboard	250
2655	Envelopes	250
2651	Fiber cans, tubes, drums, and similar products	250
2641	Folding paperboard boxes	250
2621	Paper coating and glazing	500
2631	Paper mills, except building paper mills	750
2646	Paperboard mills	750
2646	Pressed and molded pulp goods	750
2654	Pulp mills	750
2652	Sanitary food containers	750
2644	Set-up paperboard boxes	250
2952	Wallpaper	250
2992	Major Group 29—Petroleum Refining and Related Industries:	
2951	Asphalt felts and coatings	750
2911	Lubricating oils and greases	500
2999	Paving mixtures and blocks	250
2952	Petroleum refining <sup>2</sup>	1000
3361	Products of petroleum and coal, not elsewhere classified	250
3312	Major Group 33—Primary Metal Industries:	
3362	Aluminum castings	250
3362	Blast furnaces (including coke ovens), steel works, and rolling mills	1000
3316	Brass, bronze, copper, copper base alloy castings	250
3357	Cold rolled sheet, strip and bars	1000
3313	Drawing and insulating of nonferrous wire	1000
3321	Electrometallurgical products	750
3391	Gray iron foundries	500
3322	Iron and steel forgings	500
3369	Malleable iron foundries	500
3392	Nonferrous castings, not elsewhere classified	250
3399	Nonferrous forgings	250
3334	Primary metal industries, not elsewhere classified	750
3331	Primary production of aluminum	1000
3332	Primary smelting and refining of copper	1000
3339	Primary smelting and refining of lead	1000
3333	Primary smelting and refining of nonferrous metals, not elsewhere classified	750
3352	Primary smelting and refining of zinc	750
3351	Rolling, drawing, and extruding of aluminum	750
3356	Rolling, drawing, and extruding of copper	750
3341	Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum	750
3323	Secondary smelting, refining, and alloying of nonferrous metals and alloys	250
3317	Steel foundries	500
	Steel pipe and tubes	1000

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification Code	Industry	Employment size standard (number of employees) <sup>1</sup>
3315	Major Group 33—Primary Metal Industries—Continued	
	Steel wire drawing and steel nails and spikes	1000
	Major Group 27—Printing and Publishing Industries	250
	Major Group 38—Professional, Scientific, and Controlling Instruments: Photographic and Optical Goods: Watches and Clocks:	
3822	Automatic temperature controls	500
3843	Dental equipment and supplies	250
3811	Engineering, laboratory, and scientific and research instruments and associated equipment	500
3821	Mechanical measuring and controlling instruments, except automatic temperature controls	500
3851	Ophthalmic goods	250
3831	Optical instruments and lenses	250
3842	Orthopedic, prosthetic, and surgical appliances and supplies	250
3861	Photographic equipment and supplies	500
3841	Surgical and medical instruments and apparatus	250
3872	Watches	250
3871	Watches, clocks, and parts except watches	500
3069	Major Group 30—Rubber and Miscellaneous Plastics Products:	
3079	Fabricated rubber products, not elsewhere classified	500
3031	Miscellaneous plastics products	250
3021	Reclaimed rubber	750
3011	Rubber footwear	1000
	Tires and inner tubes	1000
3291	Major Group 32—Stone, Clay, and Glass Products:	
3292	Abrasive products	250
3251	Asbestos products	750
3241	Brick and structural clay tile	250
3253	Cement, hydraulic	750
3255	Ceramic wall and floor tile	500
3271	Clay refractories	250
3272	Concrete brick and block	250
3281	Concrete products, except block and brick	250
3263	Cut stone and stone products	250
3211	Fine earthenware (whiteware) table and kitchen articles	500
3221	Flat glass	1000
3231	Glass containers	750
3275	Glass products, made of purchased glass	250
3274	Gypsum products	1000
3296	Lime	500
3295	Mineral wool	750
3297	Minerals and earths, ground or otherwise treated	250
3299	Nonclay refractories	750
3264	Nonmetallic mineral products, not elsewhere classified	250
3269	Porcelain electrical supplies	500
3229	Pottery products, not elsewhere classified	250
3273	Pressed and blown glass and glassware, not elsewhere classified	750
3293	Ready mixed concrete	250
3259	Steam and other packing, and pipe and boiler covering	500
3261	Structural clay products, not elsewhere classified	250
3262	Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories	750
2296	Vitreous china table and kitchen articles	500
2211	Major Group 22—Textile Mill Products:	
2221	Artificial leather, oilcloth, and other impregnated and coated fabrics except rubberized	250
2231	Broad woven fabric mills, cotton	1000
	Broad woven fabric mills, man-made fiber and silk	500
	Broad woven fabric mills, wool; including dyeing and finishing	250
2279	Carpets, rugs, and mats, not elsewhere classified	500
2298	Cordage and twine	250



## RULES AND REGULATIONS

SCHEDULE A—EMPLOYMENT SIZE STANDARDS FOR CONCERNS PRIMARILY ENGAGED IN MANUFACTURING—Continued

Census classification Code	Industry	Employment size standard (number of employees) <sup>1</sup>
	Major Group 22—Textile Mill Products—Continued	
2269	Dyeing and finishing textiles, not elsewhere classified	250
2291	Felt goods, except woven felts and hats	250
2261	Finishers of broad woven fabrics of cotton	500
2262	Finishers of broad woven fabrics of man-made fiber and silk	500
2251	Full fashioned hosiery mills	250
2256	Knit fabric mills	250
2253	Knit outerwear mills	250
2254	Knit underwear mills	250
2259	Knitting mills, not elsewhere classified	250
2292	Lace goods	250
2241	Narrow fabrics and other small-ware mills: cotton, wool, silk, and man-made fiber	250
2293	Paddings and upholstery filling	250
2294	Processed waste and recovered fibers and flock	250
2252	Seamless hosiery mills	250
2299	Textile goods, not elsewhere classified	250
2284	Thread mills	500
2286	Tire cord and fabric	1000
2272	Tufted carpets and rugs	500
2297	Wool scouring, worsted combing, and tow to top mills	250
2271	Woven carpets and rugs	750
2283	Yarn mills, wool, including carpet and rug yarn	250
2281	Yarn spinning mills, cotton, man-made fibers and silk	500
2282	Yarn throwing, twisting, and winding mills, cotton, man-made fibers and silk	250
	Major Group 21—Tobacco Manufactures	
2111	Cigarettes	1000
2121	Cigars	500
2131	Tobacco (chewing and smoking) and snuff	500
2141	Tobacco stemming and re-drying	500
	Major Group 37—Transportation Equipment	
3721	Aircraft	1000
3722	Aircraft engines and engine parts	1000
3729	Aircraft parts and auxiliary equipment, not elsewhere classified	1000
3723	Aircraft propellers and propeller parts	1000
3732	Boat building and repairing	250
3741	Locomotives and parts	1000
3717	Motor vehicles and parts <sup>2</sup>	1000
3751	Motorcycles, bicycles, and parts	500
3742	Railroad and street cars	750
3731	Ship building and repairing	1000
3791	Trailer coaches	250
3799	Transportation equipment, not elsewhere classified	250
3713	Truck and bus bodies	250
3715	Truck trailers	500

<sup>1</sup>The "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters.

<sup>2</sup>Together with its affiliates does not employ more than 1,000 persons and does not have more than 30,000 barrels-per-day capacity from owned and leased facilities.

<sup>3</sup>The three Standard Industrial Classification industries (3711, 3712, and 3714) have been combined because of a major problem of defining the reporting unit in terms of these industries. This difficulty arises from the fact that many large establishments have integrated operations which include the production of parts or bodies and the assembly of complete vehicles at the same location.

SCHEDULE B—INDUSTRY EMPLOYMENT SIZE STANDARDS FOR THE PURPOSE OF GOVERNMENT PROCUREMENT

MANUFACTURING		
Census Classification Code	Industry	Employment size standard (Number of Employees) <sup>1</sup>
	Major Group 19—Ordnance and Accessories:	
1925	Guided missiles and space vehicles, completely assembled	1000
1931	Tanks and tank components	1000
1951	Small arms	1000
1961	Small arms ammunition	1000
	Major Group 20—Food and Kindred Products:	
2032	Canned specialties	1000
2043	Cereal preparations	1000
2046	Wet corn milling	750
2052	Biscuit, crackers, and pretzels	750
2062	Cane sugar refining	750
2063	Beet sugar	750
2085	Distilled, rectified, and blended liquors	750
2093	Vegetable oil mills, except cottonseed and soybean	1000
2096	Shortening, table oils, margarine and other edible fats and oils, not elsewhere classified	750
	Major Group 21—Tobacco Manufactures:	
2111	Cigarettes	1000
	Major Group 22—Textile Mill Products:	
2211	Broad woven fabric mills, cotton	1000
2271	Woven carpets and rugs	750
2296	Tire cord and fabric	1000
	Major Group 26—Paper and Allied Products:	
2611	Pulp mills	750
2621	Paper mills, except building paper mills	750
2631	Paperboard mills	750
2646	Pressed and molded pulp goods	750
2654	Sanitary food containers	750
2661	Building paper and building board mills	750
	Major Group 28—Chemicals and Allied Products:	
2812	Alkalies and chlorine	1000
2813	Industrial gases	1000
2815	Dyes, dye (cyclic) intermediates, and organic pigments (lakes and toners)	750
2816	Inorganic pigments	1000
2818	Industrial organic chemicals, not elsewhere classified	1000
2819	Industrial inorganic chemicals, not elsewhere classified	750
2821	Plastics materials, synthetic resins, and nonvulcanizable elastomers	750
2822	Synthetic rubber (vulcanizable elastomers)	1000
2823	Cellulose man-made fibers	1000
2824	Synthetic organic fibers, except cellulosic	1000
2833	Medicinal chemicals and botanical products	750
2834	Pharmaceutical preparations	750
2841	Soap and other detergents, except specialty cleaners	750
2892	Explosives	750
	Major Group 29—Petroleum Refining and Related Industries:	
2911	Petroleum refining <sup>2</sup>	1000
2952	Asphalt felts and coatings	750
	Major Group 30—Rubber and Miscellaneous Plastics Products:	
3011	Tires and inner tubes	1000
3021	Rubber footwear	1000
3031	Reclaimed rubber	750
	Major Group 32—Stone, Clay, and Glass Products:	
3211	Flat glass	1000
3221	Glass containers	750

See footnotes at end of table.

SCHEDULE B—INDUSTRY EMPLOYMENT SIZE STANDARDS FOR THE PURPOSE OF GOVERNMENT PROCUREMENT—Continued

Census classification Code	Industry	Employment size standard (number of employees) <sup>1</sup>
	Major Group 32—Stone, Clay, and Glass Products—Con.	
3229	Pressed and blown glass and glassware, not elsewhere classified	750
3241	Cement, hydraulic	750
3261	Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories	750
3275	Gypsum products	1000
3292	Asbestos products	750
3296	Mineral wool	750
3297	Nonclay refractories	750
	Major Group 33—Primary Metal Industries:	
3312	Blast furnaces (including coke ovens), steel works, and rolling mills	1000
3313	Electrometallurgical products	750
3315	Steel wire drawing and steel nails and spikes	1000
3316	Cold rolled sheet, strip and bars	1000
3317	Steel pipe and tubes	1000
3331	Primary smelting and refining of copper	1000
3332	Primary smelting and refining of lead	1000
3333	Primary smelting and refining of zinc	750
3334	Primary production of aluminum	1000
3339	Primary smelting and refining of nonferrous metals, not elsewhere classified	750
3351	Rolling, drawing, and extruding of copper	750
3352	Rolling, drawing, and extruding of aluminum	750
3356	Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum	750
3357	Drawing and insulating of non-ferrous wire	1000
3399	Primary metal industries, not elsewhere classified	750
	Major Group 34—Fabricated Metal Products, Except Ordnance, Machinery, and Transportation Equipment:	
3411	Metal cans	1000
3431	Enameled iron and metal sanitary ware	750
	Major Group 35—Machinery, except Electrical:	
3511	Steam engines; steam, gas and hydraulic turbines; and steam, gas, and hydraulic turbine generator set units	1000
3519	Internal combustion engines, not elsewhere classified	1000
3531	Construction machinery and equipment	750
3562	Ball and roller bearings	750
3571	Computing and accounting machines, including cash registers	1000
3572	Typewriters	1000
3585	Refrigerators; refrigeration machinery, except household; and complete air conditioning units	750
	Major Group 36—Electrical Machinery, Equipment and Supplies:	
3612	Power, distribution, and specialty transformers	750
3613	Switchgear and switchboard apparatus	750
3621	Motors and generators	1000
3622	Industrial controls	750
3624	Carbon and graphite products	750
3631	Household cooking equipment	750
3632	Household refrigerators and home and farm freezers	1000



**SCHEDULE B—INDUSTRY EMPLOYMENT SIZE STANDARDS FOR THE PURPOSE OF GOVERNMENT PROCUREMENT—Continued**

Census classification Code	Industry	Employment size standard (number of employees) <sup>1</sup>
	Major Group 36—Electrical Machinery, Equipment and Supplies—Continued	
3633	Household laundry equipment.	1000
3634	Electric housewares and fans.	750
3635	Household vacuum cleaners.	750
3636	Sewing machines.	750
3641	Electric lamps.	1000
3651	Radio and television receiving sets, except communication types.	750
3652	Phonograph records.	750
3661	Telephone and telegraph apparatus.	1000
3662	Radio and television transmitting, signaling, and detection equipment and apparatus.	750
3671	Radio and television receiving type electron tubes, except cathode ray.	1000
3672	Cathode ray picture tubes.	750
3673	Transmitting, industrial, and special purpose electron tubes.	750
3692	Primary batteries, dry and wet.	1000
3694	Electrical equipment for internal combustion engines.	750
	Major Group 37—Transportation Equipment.	
3717	Motor vehicles and parts <sup>2</sup> .	1000
3721	Aircraft <sup>3</sup> .	1000
3722	Aircraft engines and engine parts.	1000
3723	Aircraft propellers and propeller parts.	1000
3729	Aircraft parts and auxiliary equipment, not elsewhere classified <sup>4</sup> .	1000
3731	Ship building and repairing.	1000
3741	Locomotives and parts.	1000
3742	Railroad and street cars.	50
	Major Group 39—Miscellaneous Manufacturing Industries:	
3982	Linoleum, asphalted-felt-base, and other hard surface floor coverings, not elsewhere classified.	750

<sup>1</sup> The "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters.

<sup>2</sup> Together with its affiliates does not employ more than 1,000 persons and does not have more than 30,000 barrels-per-day capacity from owned and leased facilities.

<sup>3</sup> The three Standard Industrial Classification industries (3711, 3712, and 3714) have been combined because of a major problem of defining the reporting unit in terms of these industries. This difficulty arises from the fact that many large establishments have integrated operations which include the production of parts or bodies and the assembly of complete vehicles at the same location.

<sup>4</sup> Includes maintenance as defined in the Federal Aviation Regulations (14 CFR 1.1) but excludes contracts solely for preventive maintenance as defined in 14 CFR 1.1. As defined in the Federal Aviation Regulations:

"Maintenance" means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance.

"Preventive maintenance" means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations.

<sup>5</sup> Guided missile engines and engine parts are classified in SIC 3722. Missile control systems are classified in SIC 3682.

[F.R. Doc. 64-3; Filed, Jan. 3, 1964; 8:45 a.m.]

## Title 29—LABOR

### Subtitle A—Office of the Secretary of Labor

#### PART 1—PROCEDURE FOR PREDETERMINATION OF WAGE RATES

#### PART 3—CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING AND PUBLIC WORK AND ON BUILDING AND WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

#### PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION

#### Revisions

All relevant matters presented by interested persons regarding the proposed revisions of Parts 1, 3 and 5, Title 29, Code of Federal Regulations, published in the FEDERAL REGISTER at 27 F.R. 10761 have been carefully considered. After such consideration and pursuant to R.S. 161 (5 U.S.C. 22), section 2 of the Act of June 13, 1934 (48 Stat. 948; 40 U.S.C. 276c), section 10 of the Portal-to-Portal Act of 1947 (61 Stat. 89; 29 U.S.C. 258), and Reorganization Plan No. 14 of 1950 (3 CFR 1949-53 Comp., p. 1007), Title 29 of the Code of Federal Regulations is hereby amended by revising Parts 1, 3 and 5 thereof in the manner indicated below.

The principal changes accomplished by the revisions are designed:

(1) To facilitate the administration of the prevailing wage provisions of the Davis-Bacon Act and its related statutes by making wage determinations effective for 120 calendar days from the date of their issuance, by providing a uniform procedure for the establishment of wage rates for classifications not included in wage determinations, and by giving the administering agencies more time for implementing changes in wage determinations.

(2) To improve the prevailing wage determination process by providing for the submission of pertinent information by the agencies requesting wage determinations.

(3) To improve the so-called Copeland "anti-kickback" regulations by eliminating the necessity of requests for permission to make payroll deductions in those instances where experience has shown that the policy and provisions of the Copeland Act will not be impeded.

(4) To aid the coordination of the administration of the labor standards provisions of the various statutes subject to Reorganization Plan No. 14 of 1950 and to help improve consistency in their enforcement by providing new reporting procedures.

(5) To improve the debarment provisions under Reorganization Plan No. 14 of 1950 by providing for a flexible period of debarment up to three years and by providing for removal from the debarred bidders list upon a demonstration of current responsibility.

(6) To improve the debarment procedure by publishing applicable rules.

(7) To provide for discretionary review by the Wage Appeals Board [created by a delegation of authority published in the FEDERAL REGISTER on this date] of wage determinations, debarment actions, assessments of liquidated damages under the Contract Work Hours Standards Act, and decisions otherwise made after hearings provided for in 29 CFR Parts 1 and 5.

These revisions shall become effective thirty days after the date of publication of this document in the FEDERAL REGISTER.

Part 1 of Title 29 of the Code of Federal Regulations is revised as follows:

#### PART 1—PROCEDURE FOR PREDETERMINATION OF WAGE RATES

- Sec.
- 1.1 Purpose and scope.
  - 1.2 Definitions.
  - 1.3 Obtaining and compiling wage rate information.
  - 1.4 Outline of agency construction programs.
  - 1.5 Determination of wage rates.
  - 1.6 Scope of consideration.
  - 1.7 Field survey.
  - 1.8 Hearings.
  - 1.9 Prehearing conferences.
  - 1.10 Hearing Examiner's proposed decision.
  - 1.11 Submission of Hearing Examiner's proposed decision to interested persons.
  - 1.12 Exceptions of interested persons.
  - 1.13 Final decision.
  - 1.14 Review by Wage Appeals Board.
  - 1.15 Public information.

**AUTHORITY:** The provisions of this part issued under R.S. 161, 64 Stat. 1267; sec. 2, 48 Stat. 948; sec. 10, 61 Stat. 89; 5 U.S.C. 22, 133z-15; 40 U.S.C. 276c; 29 U.S.C. 258. Interpret or apply sec. 1, 46 Stat. 1494, 49 Stat. 1011; sec. 212 added to c. 847, 48 Stat. 1246 by sec. 14, 53 Stat. 807; sec. 602, added to c. 94, 64 Stat. 77 at 73 Stat. 681; sec. 2, 60 Stat. 1041; sec. 15, 60 Stat. 178; sec. 307(f), 63 Stat. 430; sec. 205, 64 Stat. 973; sec. 310, 65 Stat. 307; sec. 201, 64 Stat. 1248; sec. 3, 72 Stat. 532; sec. 108, 72 Stat. 895; sec. 6, 62 Stat. 1158; sec. 15, 75 Stat. 714; sec. 21, 75 Stat. 613; sec. 15, 75 Stat. 688; sec. 721, 77 Stat. 167; secs. 101, 122, 135, 205, 77 Stat. 282, 284, and 288. 40 U.S.C. 276a; 12 U.S.C. 1701q, 1715c, 1749a; 42 U.S.C. 291h, 1416.



1459, 1592; 29 U.S.C. 1114, 20 U.S.C. 636; 23 U.S.C. 113; 50 U.S.C. App. 2281; 33 U.S.C. 466e.

### § 1.1 Purpose and scope.

The regulations contained in this part set forth the procedure for the determination of wage rates pursuant to each of the following acts: Davis-Bacon Act, National Housing Act, Hospital Survey and Construction Act, Federal Airport Act, Housing Act of 1949, School Survey and Construction Act of 1950, Defense Housing and Community Facilities and Services Act of 1951, Federal-Aid Highway Act of 1956, Federal Civil Defense Act of 1950, College Housing Act of 1950, Federal Water Pollution Control Act, Area Redevelopment Act, Delaware River Basin Compact, Housing Act of 1959, and Health Professions Educational Assistance Act of 1963, Mental Retardation Facilities Construction Act, Community Mental Health Centers Act, and such other statutes as may, from time to time, confer upon the Secretary of Labor similar wage determining authority.

### § 1.2 Definitions.<sup>1</sup>

(a) The term "prevailing wage rate" for each classification of laborers and mechanics which the Solicitor shall regard as prevailing in an area shall mean:

(1) The rate of wages paid in the area in which the work is to be performed, to the majority of those employed in that classification in construction in the area similar to the proposed undertaking;

(2) In the event that there is not a majority paid at the same rate, then the rate paid to the greater number; *Provided*, Such greater number constitutes 30 percent of those employed; or

(3) In the event that less than 30 percent of those so employed receive the same rate, then the average rate.

(b) The term "area" in determining wage rates under the Davis-Bacon Act and the prevailing wage provisions of the other statutes listed in § 1.1 shall mean the city, town, village, or other civil subdivision of the State in which the work is to be performed. In determining wage rates pursuant to section 115 of the Federal-Aid Highway Act of 1956, the College Housing Act of 1950, and the Federal Water Pollution Control Act, the term "area" shall mean immediate locality of the proposed project.

(c) The term "average rate" for each classification in an area shall mean the rate obtained by adding the hourly rates paid to all workers in the classification and dividing by the total number of such workers.

(d) The term "Solicitor" shall mean the Solicitor of Labor.

### § 1.3 Obtaining and compiling wage rate information.

For the purpose of making wage rate determinations, the Solicitor shall conduct a continuing program for the obtaining and compiling of wage rate information.

(a) The Solicitor shall encourage the voluntary submission of wage rate data

by contractors, contractors' associations, labor organizations, public officials, and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area. Rates must be determined, among others, for such varying types of projects as buildings, bridges, dams, highways, tunnels, sewers, power lines, railways, airports (buildings and runways), apartment houses, wharves, levees, canals, dredging, land-clearing and excavating. Accordingly, the information submitted should reflect not only that the specified wage rate or rates are paid to a particular craft in an area, but also the type or types of construction on which such rate or rates are paid.

(b) The following types of information will be considered in making wage rate determinations:

(1) Statements showing wage rates paid on projects. (Such statements should indicate the names and addresses of contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, the number of workers employed in each classification on each project, and the respective wage rates paid such workers.);

(2) Signed collective bargaining agreements. (The Solicitor may request the parties to an agreement to submit statements certifying to its scope and application.);

(3) Wage rates determined for public construction by state and local officials pursuant to prevailing wage legislation;

(4) Information furnished by Federal and State agencies. See § 5.3 of this subtitle. (In making wage rate determinations pursuant to section 115 of the Federal-Aid Highway Act of 1956, the Solicitor shall consult with the highway department of the State in which a project in the Interstate System is to be performed. Before making a determination of wage rates for such a project he shall give due regard to the information thus obtained.);

(5) Any other information pertinent to the determination of prevailing wage rates.

(c) The Solicitor shall supplement such information obtained on a voluntary basis by such means, including the holding of hearings, and from whatever sources he deems necessary.

### § 1.4 Outline of agency construction programs.

To the extent practicable, at the beginning of each fiscal year each agency using wage determinations under any of the various statutes listed in § 1.1 shall furnish the Solicitor with a general outline of its proposed construction programs for the coming year indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the locations of construction. During the fiscal year, each agency shall notify the Solicitor of any significant changes in its proposed construction programs, as outlined at the beginning of the fiscal year.

### § 1.5 Determination of wage rates.

In the event that the data compiled under § 1.3 is sufficient to determine the prevailing wage rates the Solicitor shall make a determination as to the wage rates prevailing in the area.

§ 1.6 Scope of consideration (exclusive of wage rate determinations made pursuant to the Federal-Aid Highway Act of 1956, which shall be made in accordance with § 1.3(b)(4) of this part).

(a) In making a wage rate determination projects completed more than one year prior to the date of request for the determination may, but need not be considered.

(b) If there has been no similar construction within the area in the past year, wage rates paid on the nearest similar construction may be considered.

### § 1.7 Field survey.

Whenever the Solicitor deems that the data at hand are insufficient to make a determination with respect to all the crafts necessary to perform the proposed construction work, he may have a field survey conducted in the area of the proposed project for the purpose of obtaining sufficient information upon which to make a determination of wage rates.

### § 1.8 Hearings.

Whenever he deems it necessary because of insufficiency of information or impracticality of a field survey, or both, the Solicitor may direct a hearing to be held. He shall designate a hearing examiner who shall, after notice to all interested persons, proceed to the project area and make such investigations and conduct such hearings as may be necessary to make a determination of wage rates for the project.

### § 1.9 Pre-hearing conferences.

When it appears that a pre-hearing conference will expedite proceedings, the examiner prior to the hearing may request interested persons to attend a conference to consider such matters as may expedite the hearing.

### § 1.10 Hearing examiner's proposed decision.

The hearing examiner shall make a written proposed decision in which he shall:

(a) State the procedure that he has followed;

(b) Summarize briefly the evidence and information that he has received;

(c) Analyze the evidence and information;

(d) Draft a proposed decision for the Solicitor's consideration.

### § 1.11 Submission of hearing examiner's proposed decision to interested persons.

A copy of the hearing examiner's proposed decision shall be mailed to each interested person appearing at the hearing.

### § 1.12 Exceptions of interested persons.

Any interested person may within 5 days after receipt of the hearing exami-

<sup>1</sup> These definitions are not intended to restrict the meaning of the terms as used in the applicable statutes.



ner's proposed decision file his exceptions thereto. Such exceptions shall be filed with the Chief Hearing Examiner, U.S. Department of Labor, Washington 25, D.C., for transmission to the Solicitor.

#### § 1.13 Decision of Solicitor.

The Solicitor shall rule upon any exceptions filed under § 1.12, and shall make a determination as to the prevailing wage rates for the project.

#### § 1.14 Review by Wage Appeals Board.

Any interested person may appeal to the Wage Appeals Board for a review of a determination of wage rates by the Solicitor under this part, or any findings and conclusions made on the record of any hearings held under § 1.3(c). Any such appeal may, in the discretion of the Wage Appeals Board, be received, accepted, and decided in accordance with such procedures as the Board may establish.

#### § 1.15 Public information.

Papers and documents containing information furnishing the basis for any determination of wage rates shall be available for public inspection under the procedure prescribed in § 2.6(a) of this subtitle. Copies of such papers and documents may be obtained without regard to the procedure prescribed in § 2.9 of this subtitle. The application of these procedures shall ensure that disclosure of the relevant information will be made in a manner which will not be detrimental to the public interest or to any person voluntarily submitting information who requested that such information be held confidential.

2. Part 3 of Title 29 of the Code of Federal Regulations is revised as follows:

### PART 3—CONTRACTORS AND SUB- CONTRACTORS ON PUBLIC BUILD- ING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

- Sec. 3.1 Purpose and scope.
- 3.2 Definitions.
- 3.3 Weekly statement with respect to payment of wages.
- 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.
- 3.5 Payroll deductions permissible without application or approval of the Secretary of Labor.
- 3.6 Payroll deductions permissible with the approval with the Secretary of Labor.
- 3.7 Applications for the approval of the Secretary of Labor.
- 3.8 Action by the Secretary of Labor upon applications.
- 3.9 Prohibited payroll deductions.
- 3.10 Methods of payment of wages.
- 3.11 Regulations part of contract.

**AUTHORITY:** The provisions of this part issued under R.S. 161, sec. 2, 48 Stat. 848; Reorg. Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 22, 1332-note; 40 U.S.C. 276c.

#### § 3.1 Purpose and scope.

This part prescribes "anti-kickback" regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. No. 3—5

276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with Federally-assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

#### § 3.2 Definitions.

As used in the regulations in this part:

(a) The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a "building" or "work" within the meaning of the regulations in this part.

(b) The terms "construction," "prosecution," "completion," or "repair" mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms "public building" or "public work" include building or work

for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term "building or work financed in whole or in part by loans or grants from the United States" includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term does not include building or work for which Federal assistance is limited solely to loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is "employed" and receiving "wages," regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term "any affiliated person" includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

(g) The term "Federal agency" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

#### § 3.3 Weekly statement with respect to payment of wages.

(a) As used in this section, the term "employee" shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by these regulations during the preceding weekly payroll period. The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be in the following form:

#### WEEKLY STATEMENT OF COMPLIANCE

I, \_\_\_\_\_, 19\_\_\_\_  
(Name of signatory party) (Title)  
do hereby state:



(1) That I pay or supervise the payment of the persons employed by \_\_\_\_\_

(Contractor or subcontractor)

on the \_\_\_\_\_; that

(Building or work)

during the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and ending on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said \_\_\_\_\_ from \_\_\_\_\_

(Contractor or subcontractor)

the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Part 3), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 537; 40 U.S.C. 276c), and described below:

(Paragraph describing deductions, if any)

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the [Bureau of Apprenticeship and Training,] United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(Signature and title)

Section 1001 of Title 18 of the United States Code (Criminal Code and Criminal Procedure) shall apply to such statement as provided at 72 Stat. 967 (18 U.S.C. 1001, among other things, provides that whoever knowingly and willfully makes or uses a document or fraudulent statement of entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned not more than five years, or both).

(c) The requirements of this section shall not apply to any contract of \$2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

#### § 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.

(a) Each weekly statement required under § 3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site

of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

#### § 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

(a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.

(b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

(c) Any deduction of amounts required by court process to be paid to another, unless, the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities or retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: *Provided, however*, That the following standards are met: (1) The deduction is not otherwise prohibited by law; (2) it is either: (i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either

for the obtaining of or for the continuation of employment, or (ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; (3) no profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and (4) the deductions shall serve the convenience and interest of the employee.

(e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: *Provided, however*, That a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.

(j) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and Part 531 of this title. When such a deduction is made the additional records required under § 516.25(a) of this title shall be kept.

#### § 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under § 3.5. The Secretary may grant permission whenever he finds that:

(a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;

(b) The deduction is not otherwise prohibited by law;

(c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and



(d) The deduction serves the convenience and interest of the employee.

### § 3.7 Applications for the approval of the Secretary of Labor.

Any application for the making of payroll deductions under § 3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

(a) The application shall be in writing and shall be addressed to the Secretary of Labor.

(b) The application shall identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions only on specific, identified contracts, except upon a showing of exceptional circumstances.

(c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of § 3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.

(d) The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.

(e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

### § 3.8 Action by the Secretary of Labor upon applications.

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of § 3.6; and shall notify the applicant in writing of his decision.

### § 3.9 Prohibited payroll deductions.

Deductions not elsewhere provided for by this part and which are not found to be permissible under § 3.6 are prohibited.

### § 3.10 Methods of payment of wages.

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

### § 3.11 Regulations part of contract.

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see § 5.5(a) of this subtitle.

3. Part 5 of Title 29, Code of Federal Regulations, is revised as follows:

## PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION<sup>1</sup>

Sec.

- 5.1 Purpose and scope.
- 5.2 Definitions.
- 5.3 Procedure for requesting wage determinations.
- 5.4 Use and effectiveness of wage determinations.
- 5.5 Contract provisions and related matters.
- 5.6 Enforcement.
- 5.7 Reports to the Secretary of Labor.
- 5.8 Review of recommendations for an appropriate adjustment in liquidated damages under the Contract Work Hours Standards Act.
- 5.9 Suspension of funds.
- 5.10 Restitution; criminal action.
- 5.11 Department of Labor investigations; hearings.
- 5.12 Rulings and interpretations.
- 5.13 Variations, tolerances, and exemptions from Parts 1 and 3 of this subtitle and this part.
- 5.14 Limitations, variations, tolerances, and exemptions under the Contract Work Hours Standards Act.

**AUTHORITY:** The provisions of this part issued under R.S. 161, Reorg. Plan No. 14 of 1950, 64 Stat. 1267; sec. 2, 48 Stat. 948; sec. 10, 61 Stat. 89; 5 U.S.C. 22, 1332-15 note, 29 U.S.C. 258; 40 U.S.C. 276c.

### § 5.1 Purpose and scope.

(a) The regulations contained in this part are promulgated in order to coordinate the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration and such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon him under Reorganization Plan No. 14 of 1950:

The Davis-Bacon Act (40 U.S.C. 276a-276a-7), and as extended to the Federal-Aid Highway Act of 1956 (23 U.S.C. 113).

Copeland Act (40 U.S.C. 276c).

The Contract Work Hours Standards Act (40 U.S.C. 327-330).

National Housing Act (12 U.S.C. 1713, 1715a, 1715c, 1715k, 1715(d) (3) and (4), 1715v, 1715w, 1715x, 1743, 1747, 1748b, 1748h-2, 1750g).

Hospital Survey and Construction Act (42 U.S.C. 291h).

Federal Airport Act (49 U.S.C. 1114).

Housing Act of 1949 (42 U.S.C. 1459).

School Survey & Construction Act of 1950 (20 U.S.C. 636).

Defense Housing & Community Facilities & Services Act of 1951 (42 U.S.C. 1592i).

United States Housing Act of 1937 (42 U.S.C. 1416).

Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281).

Area Redevelopment Act (42 U.S.C. 2518).

<sup>1</sup> Also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours Standards Act.

Delaware River Basin Compact (sec. 15.1, 75 Stat. 714).

Health Professions Educational Assistance Act of 1963 (sec. 721, 77 Stat. 167).

Mental Retardation Facilities Construction Act (secs. 101, 122, 135, 77 Stat. 282, 284, 288).

Community Mental Health Centers Act (sec. 205, 77 Stat. 292).

(b) Sections 5.3 and 5.4 contain the Department's procedural rules governing requests for wage determinations under the Davis-Bacon Act and its related statutes listed in § 1.1 of this subtitle and the use of such wage determinations.

### § 5.2 Definitions.

As used in this part:

(a) The term "Agency Head" means the principal official of the Federal agency and includes those persons duly authorized to act in his behalf;

(b) The term "Contracting Officer" means the individual, his duly appointed successor, or his authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency, or other administering agency;

(c) The term "Apprentices" means persons who are indentured and employed in a bona fide apprenticeship program and individually registered by the program sponsor with a State Apprenticeship Agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no recognized Agency exists in a State, in a program registered with the Bureau of Apprenticeship and Training, United States Department of Labor;

(d) The term "wage determination" includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision, issued prior to the award of the construction contract, except that under the National Housing Act changes in the decision shall be effective if made at any time prior to the beginning of construction. The use of the wage determination shall be subject to the provisions of § 5.4;

(e) The term "contract" means any contract within the scope of the labor standards provisions of any of the acts listed in § 5.1 and which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution, except where a different meaning is expressly indicated;

(f) The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as



bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a "building" or "work" within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(g) The terms "construction", "prosecution", "completion", or "repair" mean all types of work done on a particular building or work at the site thereof or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project, including without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project, by persons employed by the contractor or subcontractor. A mere token beginning of the work shall not be deemed to be the "beginning of construction" as that term is used in the National Housing Act.

(h) The term "public building" or "public work" includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency. However, the term "initial construction" in the Federal-Aid Highway Act of 1956 does not include repair or maintenance work.

(i) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States, is "employed" and receiving "wages", regardless of any contractual relationship alleged to exist.

(j) The term "Federal agency" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or

substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

#### § 5.3 Procedure for requesting wage determinations.

(a) (1) The Federal Agency (or State Highway Department under the Federal-Aid Highway Act of 1956) shall initially request a wage determination under the Davis-Bacon Act or any of its related prevailing wage statutes by submitting to the Solicitor of Labor, United States Department of Labor, Washington 25, D.C., a completed Department of Labor Form DB-11 or DB-11(a), whichever form is appropriate. These forms are available from the Office of the Solicitor, United States Department of Labor. The agency shall check only those classifications on DB-11 and DB-11(a) which will be needed in the performance of the work (inserting a note such as "entire schedule" or "all applicable classifications" is not sufficient). Additional classifications needed which are not on the form may be typed in the blank spaces or on a separate list and attached to the form. The agency shall not list classifications which can be fitted into classifications on the form, or classifications which are not generally recognized in the area or in the construction industry.

(2) In completing Form DB-11 or DB-11(a), the agency shall furnish:

(i) A sufficiently detailed description of the work to indicate whether heavy, highway, or building construction, or any other type of construction is involved. Additional description or separate attachment, if necessary for identification of type of project, shall be furnished.

(ii) Location of the proposed project (include distance in miles and direction from the nearest point of reference).

(iii) The agency's evaluation as to whether the project is a building, heavy, highway or other type of construction project.

(3) Such request for a wage determination shall be accompanied by any pertinent wage payment information, which may be available. This information need not accompany a request in areas where the wage patterns are clearly established. When the requesting agency is a State Highway Department under the Federal-Aid Highway Act of 1956, such agency shall also include its recommendations as to the wages which are prevailing for each classification of laborers and mechanics on similar construction in the immediate locality.

(b) Whenever the wage patterns in a particular area for a particular type of construction are well settled and whenever the agency anticipates a large volume of procurement in that area for such a type of construction, it may request the issuance of a general wage determination for use on individual contracts for that type of construction in that area. In his discretion, the Secretary of Labor may issue such a general wage determination when, after consideration of the facts and circumstances involved, he finds that the applicable statutory stand-

ards and those of Part 1 of this subtitle will be met.

(c) The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. An agency should anticipate that such processing in the Department of Labor will take at least 30 days.

#### § 5.4 Use and effectiveness of wage determinations.

(a) Wage determinations initially issued shall be effective for 120 calendar days from the date of such determinations. If such a wage determination is not used in the period of its effectiveness, it is void. If it appears that a wage determination may expire between bid opening and award, the agency should request a new wage determination sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award and after bid opening, the Solicitor upon a written finding to that effect by the Head of the Federal Agency in individual cases may extend the expiration date of a determination whenever he finds it necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business.

(b) All actions modifying an original wage determination prior to the award of the contract or contracts for which the determination was sought shall be applicable thereto, but modifications received by the Federal agency (in the case of the Federal-Aid Highway Act of 1956, the State Highway Department of each State) later than 10 days before the opening of bids shall not be effective. Similarly, in the case of contracts entered into pursuant to the National Housing Act, changes or modifications in the original determination shall be effective if made prior to the beginning of construction, but shall not apply after the mortgage is initially endorsed by the Federal agency. A modification in no case will continue in effect beyond the effective period of the wage determination to which it relates.

(c) Upon his own initiative or the request of a Federal agency (or a State Highway Department under the Federal-Aid Highway Act of 1956), the Secretary shall correct any wage determination included in a contract subject to the minimum wage provisions of the statutes listed in § 1.1 of this subtitle whenever he finds such a wage determination contains clerical errors.

#### § 5.5 Contract provisions and related matters.

(a) The Agency Head shall cause or require to be inserted in full in any contract subject to the labor standards provisions of any of the acts listed in § 5.1, except those subject only to the Contract Work Hours Standards Act, the following clauses or any modifications thereof to meet the particular needs of the agency if first approved by the Department of Labor:

##### (1) Minimum wages.

(i) All mechanics and laborers employed or working upon the site of the work, or under the United States Housing Act of 1937



or under the Housing Act of 1949 in the construction or development of the project, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers.

(ii) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by the Federal agency to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the contracting officer shall be referred to the Secretary for final determination.

#### (2) Withholding.

The [write in name of Federal agency] may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the contractor or any subcontractor on the work the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic employed or working on the site of the work, or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project, all or part of the wages required by the contract, the [Agency] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

#### (3) Payrolls and payroll records.

(i) Payrolls and basic payroll records will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work, or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project. Such records will contain the name and address of each such employee, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid.

(ii) The contractor will submit weekly a copy of all payrolls to the [write in name of appropriate Federal agency] if the agency is a party to the contract but if the agency is not such a party the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the [write in name of agency]. The copy shall be accompanied by a statement indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "Weekly Statement of Compliance" which is required under this contract and the Copeland regulations of the Secretary of Labor (29 CFR, Part 3) shall satisfy this requirement. The contractor will

make his employment records available for inspection by authorized representatives of the [write in name of agency] and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

(4) *Apprentices.* Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, United States Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish written evidence of the registration of his program and apprentices as well as of the appropriate ratios and wage rates, prior to using any apprentices on the contract work.

(5) *Compliance with Copeland Regulations (29 CFR Part 3).* The contractor shall comply with the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference.

(6) *Subcontracts.* The contractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (5) and (7) and such other clauses as the [write in name of Federal agency] may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

(7) *Contract termination; debarment.* A breach of clauses (1) through (6) may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.

(b) In the construction of a dwelling or dwellings insured under 12 U.S.C. 1715v or 1715w, compliance with the requirements of paragraph (a) of this section may be waived by the Federal Housing Commissioner in cases or classes of cases where laborers or mechanics, not otherwise employed at any time on the project, voluntarily donate their services without full compensation for the project, voluntarily donate their construction and the Federal Housing Commissioner determines that any amounts saved thereby are fully credited to the nonprofit corporation, association, or other organization undertaking the construction.

(c) The Agency Head shall cause or require the following clauses set forth in subparagraphs (1), (2), (3) and (4) of this paragraph to be included in full in any contract subject to the Contract Work Hours Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in

which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in subparagraph (1), the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth in subparagraph (1), in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1).

(3) *Withholding for unpaid wages and liquidated damages.* The [write in the name of the Federal agency] may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2).

(4) *Subcontracts.* The contractor shall insert in any subcontracts the clauses set forth in subparagraphs (1), (2), and (3) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

(d) In any contract required to contain the withholding clause set forth in subparagraph (2) of paragraph (a) of this section, the Federal Agency may modify the clause in subparagraph (3) of paragraph (c) of this section so as to refer only to the withholding and determination of sums for liquidated damages.

(e) In any contract subject only to the Contract Work Hours Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require to be inserted a clause requiring the maintenance of records containing the information specified in § 516.2(a) of this subtitle. Records containing such information shall be preserved for a period of three years from the completion of the contract.

(f) In contracts subject to section 803 of the National Housing Act, the Agency Head shall cause or require inclusion of the following clause: Every laborer and mechanic employed by the contractor or any subcontractor engaged in the construction of the project shall receive compensation at a rate of not less than one and one-half times his basic or regular rate of pay for all hours worked in any workweek in excess of eight hours in any workday or forty hours in the workweek, as the case may be.



### § 5.6 Enforcement.

(a) (1) It shall be the responsibility of the Federal agency to ascertain whether the clauses required by § 5.5 have been inserted in the contracts. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require that the contracts contain the provisions of § 5.5 or such modifications thereof which have been approved by the Department of Labor. No payment, advance, grant, loan or guarantee of funds shall be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that he and his subcontractors have complied or that there is a substantial dispute with respect to the required provisions.

(2) The Federal agency shall make such examination of the submitted payrolls and statements as may be necessary to assure compliance with the labor standards clauses required by the regulations contained in this part and the applicable statutes listed in § 5.1. In connection with such examination particular attention should be given to the correctness of classifications and disproportionate employment of laborers, helpers or apprentices. Such payrolls and statements shall be preserved by the agency for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Secretary of Labor at any time during the 3-year period.

(3) In addition to the examination of payrolls and statements required by subparagraph (2) of this paragraph, the Federal agency shall cause investigations to be made as may be necessary to assure compliance with the labor standards clauses required by the regulations contained in this part and the applicable statutes listed in § 5.1. Projects where the contract is of short duration (6 months or less) shall be investigated before the work is accepted, if feasible. In the case of contracts which extend over a long period of time the investigation shall be made with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees and examinations of payroll data to determine the correctness of classifications and disproportionate employment of laborers, helpers, or apprentices. Complaints of alleged violations shall be given priority and statements, written or oral, made by an employee shall be treated as confidential and shall not be disclosed to his employer without the consent of the employee.

(b) (1) Whenever any contractor or subcontractor is found by the Secretary of Labor or the Agency Head with the concurrence of the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in § 5.1, other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by

the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts subject to any of the statutes listed in § 5.1. *Provided, however,* That the Solicitor shall direct the removal from the debarred bidders list of any contractor or subcontractor whom he has found to have demonstrated a current responsibility to comply with the labor standards provisions applicable to Federal contracts and Federally-assisted construction work subject to any of the applicable statutes listed in § 5.1. In cases arising under contracts covered by the Davis-Bacon Act, the ineligibility provision prescribed in that act shall govern.

(2) The Agency Head shall furnish to the Secretary of Labor for transmittal to the Comptroller General the names of the persons or firms who have been found to have disregarded their obligations to employees. The Comptroller General will distribute a list to all Departments of the Government giving the names of such ineligible persons or firms.

(c) (1) Whenever as a result of an investigation conducted by the Agency or the Department of Labor, the officer in charge of the Wage Determination Division, Office of the Solicitor, finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in § 5.1 (other than the Davis-Bacon Act), or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under section 3(a) thereof, the aforesaid Wage Determination Officer shall promptly notify by registered or certified mail the contractor or subcontractor and its responsible officers, if any (and any firms in which the contractor or subcontractor are known to have a substantial interest), of this finding and afford such contractor or subcontractor and any other parties notified an opportunity to present such reasons or considerations as they have to offer relating to why debarment action should not be taken under § 5.6(b) of this part or section 3(a) of the Davis-Bacon Act. The aforesaid Wage Determination Officer shall furnish to those notified a summary of the investigative findings, and shall make available to them any information disclosed by the investigation which is not privileged or found confidential for good cause. If this opportunity is requested, an informal proceeding shall be held before a hearing examiner, a regional attorney, or any other Departmental officer of appropriate ability. At the conclusion of the informal proceeding, the presiding officer shall issue his decision which shall be served by registered or certified mail upon the interested parties.

(2) Within 30 days after service of the decision, any party may file objections to the decision with the Solicitor of Labor, United States Department of Labor, Washington, D.C. Such objections shall be specific, and shall be accompanied by reasons or bases therefor. In his discretion, the Solicitor may permit oral argument. If no objections are

filed, the decision of the presiding officer shall be final, except in cases under section 3 of the Davis-Bacon Act as to any action to be taken by the Comptroller General under that section.

(3) The decision of the Solicitor shall show a ruling upon each objection presented, and shall include a statement of (i) the findings and conclusions, as well as the reasons or bases therefor, upon all material issues of fact, law, or discretion presented on the record, and (ii) an appropriate order or recommendation. The decision of the Solicitor shall be final, except in cases accepted for review, upon petition, by the Wage Appeals Board<sup>2</sup> and in cases under section 3 of the Davis-Bacon Act as to any action to be taken by the Comptroller General under that section.

(d) Any person or firm debarred under § 5.6(b) may in writing request removal from the debarment list. The procedure for removal shall be substantially similar to the debarment procedure set forth in paragraph (c) of this section. That is, the person or firm shall have an opportunity to demonstrate in an informal proceeding a current responsibility to comply with the labor standards provisions applicable to Federal contracts and to Federally-assisted construction work and to file objections to the presiding officer's decision for consideration by the Solicitor of Labor.

### § 5.7 Reports to the Secretary of Labor.

(a) *Enforcement reports.* (1) Where underpayments total less than \$500.00 and are nonwillful, and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations, except where the Department of Labor has expressly requested that the investigation be made. In the latter case, the investigating agency shall submit a factual summary report including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed, corrective measures taken (such as "letters of notice"), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under § 5.8.

(2) Where underpayments total \$500 or more, or are willful, the Federal agency shall furnish to the Department of Labor, as soon as practicable, a detailed enforcement report. The report should be prepared in accordance with the "Investigation and Enforcement Manual" published by the Department of Labor with respect to "Labor Standards Provisions Applicable to Contracts Covering Federally-Financed and Assisted Construction". In cases involving underpayments under the Davis-Bacon Act, the report should meet the reporting requirements contained in Comptroller General's Letter B-3368, dated March 19, 1957.

(b) *Semiannual enforcement reports.* To assist the Secretary of Labor in ful-

<sup>2</sup> The Wage Appeals Board is established by Secretary of Labor's Order 32-63 published in the FEDERAL REGISTER on this date.



filling his responsibilities under Reorganization Plan 14 of 1950, Federal agencies shall furnish the Secretary by July 15 and January 15 of each year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and related acts covering the periods of January 1 through June 30 and July 1 through December 31, respectively. These reports should include the number of employee interviews conducted, the amount of restitution effected, the number of workers who received such restitution, any liquidated damages assessed, other corrective measures taken (such as "letters of notice"), and other pertinent data.

(c) *Additional information.* Upon request, the Agency Head shall transmit to the Secretary of Labor such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Secretary may find necessary for the performance of his duties with respect to the labor standards provisions referred to in this part.

(d) *Contract termination.* Where the contract is terminated by reason of violations of the labor standards a report shall be submitted to the Secretary of Labor and the Comptroller General giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of his contract, and the description of the work he is to perform.

### § 5.3 Review of recommendations for an appropriate adjustment in liquidated damages under the Contract Work Hours Standards Act.

(a) *Findings and recommendations by the head of the Agency.* Whenever the head of an agency finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours Standards Act and to be in excess of \$100.00, is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, he may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages necessarily include findings with respect to any wage underpayments for which the liquidated damages are determined.

(b) The recommendations of the head of an agency submitted to the Department of Labor under paragraph (a) of this section shall be reviewed initially by the officer in charge of the Division of Wage Determinations. Whenever such officer concurs in the findings and recommendations of the head of the agency, he shall issue an order to that effect, which shall be the final action of the Department of Labor with respect to the issues involved. Whenever such officer

makes findings differing from those of the head of the agency, his decision shall be transmitted forthwith to the Solicitor for review. The Solicitor shall issue a decision and order. In its discretion, the Wage Appeals Board may review the decision and order of the Solicitor.

(c) Whenever the head of an agency finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours Standards Act and to be \$100.00 or less is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, he may make an appropriate adjustment in such liquidated damages or relieve the contractor or subcontractor of liability for such liquidated damages without submitting recommendations to this effect to the Secretary. This delegation of authority is made under section 105 of the Contract Work Hours Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

### § 5.9 Suspension of funds.

In the event of failure or refusal of the contractor or any subcontractor to comply with labor standards stipulations required by the regulations contained in this part and the applicable statutes listed in § 5.1, the Federal agency shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee of funds until such time as the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

### § 5.10 Restitution, criminal action.

(a) The Agency Head may, in appropriate cases where violations of the labor standards stipulations required by the regulations contained in this part and the applicable statutes listed in § 5.1 resulting in underpayment of wages to employees are found to be nonwillful, order that restitution be made to such employees.

(b) In cases where the Agency Head finds substantial evidence that such violations are willful and in violation of a criminal statute, the Agency Head shall forward the matter to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Secretary of Labor shall be informed of the action taken.

### § 5.11 Department of Labor investigations, hearings.

(a) The Secretary of Labor shall cause to be made such investigations as he deems necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in § 5.1, or to affirm or reject the recommendations by the Head of an agency for an appropriate adjustment in liquidated damages assessed under the Contract Work Hours Standards Act. Federal

agencies, contractors, subcontractors, sponsors, applicants or owners shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigation. Any authorized representative of the Department of Labor under this section is deemed a person designated to aid in the enforcement of the overtime standards required by the Contract Work Hours Standards Act within the meaning of section 104(a) of that Act. A report of the investigation of such representative shall be transmitted to proper officers of the United States, any territory or possession, as the case may be, as required by the aforesaid section 104(a).

(b) In the event of disputes concerning the payment of prevailing wage rates or proper classifications which involve significant sums of money, large groups of employees, or novel or unusual situations, the Secretary of Labor may, upon request by a Federal agency, direct a hearing to be held. For the purpose of the hearing the Secretary of Labor shall, in writing, designate a hearing examiner who shall, after notice to all interested parties, make such investigation and conduct such hearings as may be necessary and render a decision embodying his findings and conclusions and if wages are found to be due, the amounts thereof. The hearing examiner's decision shall be sent to the interested parties and shall be final unless a petition for review of the decision by the Solicitor of Labor is filed by any such parties in quadruplicate with the Chief Hearing Examiner, United States Department of Labor, Washington 25, D.C., within 20 days after receipt thereof. The petition for review must set out separately and particularly each objection asserted. The petition for review and the record which shall include the examiner's decision then shall be certified by the hearing examiner to the Solicitor of Labor. The petitioner may file a brief (original and four copies) in support of his petition within the 20-day period and any interested party upon whom the hearing examiner's decision has been served may within 10 days after the expiration of the time for filing the petition for review, file a brief in support of, or in opposition to the hearing examiner's decision. The Solicitor of Labor's decision shall be subject to such further review by the Wage Appeals Board, as it may provide in its discretion.

### § 5.12 Rulings and interpretations.

All questions arising in any agency relating to the application and interpretation of the rules contained in this part and in Parts 1 and 3 of this subtitle, and of the labor standards provisions of any of the statutes listed in § 5.1 shall be referred to the Secretary for appropriate ruling or interpretation. The rulings and interpretations shall be authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be addressed to the Secretary of Labor, United



States Department of Labor, Washington 25, D.C.

**§ 5.13 Variations, tolerances and exemptions from Parts 1 and 3 of this subtitle and this part.**

The Secretary may make variations, tolerances, and exemptions from the requirements of this part and those of Parts 1 and 3 of this subtitle whenever he finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship.

**§ 5.14 Limitations, variations, tolerances, and exemptions under the Contract Work Hours Standards Act.**

(a) *General.* Upon his own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever he finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.

(b) *Exemptions.* Pursuant to section 105 of the Contract Work Hours Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:

(1) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.

(2) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831).

(3) Contracts of \$2,000.00 or less.

(4) Purchases and contracts other construction contracts in the aggregate amount of \$2,500.00 or less. In arriving at the aggregate amount involved, there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising.

(5) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; and the Canal Zone.

(c) *Tolerances.* (1) The "basic rate of pay" under section 102 of the Contract

Work Hours Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in Part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

(2) Concerning the tolerance provided in subparagraph (1) of this paragraph, the provisions of section 7(d) (2) of the Fair Labor Standards Act and § 778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the "regular rate" under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the "basic rate" under the Contract Work Hours Standards Act.

(3) See § 5.8(c) providing a tolerance subdelegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling \$100.00 or less under specified circumstances.

Signed at Washington, D.C., this 30th day of December 1963.

W. WILLARD WIRTZ,  
Secretary of Labor.

[F.R. Doc. 64-65; Filed, Jan. 3, 1964;  
8:46 a.m.]

## Title 49—TRANSPORTATION

### Chapter I—Interstate Commerce Commission

#### SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[No. 34206]

### PART 123—FREIGHT COMMODITY STATISTICS

#### Miscellaneous Amendments

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 20th day of December, A.D. 1963.

By order of September 13, 1963, in the above entitled proceeding the Commission required that, effective with reports for the first quarter of 1964 or for that year, as the case might be, and thereafter until further order, class I and II railroads, other than switching or terminal companies, class A and B water carriers, maritime carriers, electric railroads, and class I common and contract motor carriers of property, as specified therein, should report commodity statistics on the basis of the 3, 4, and 5-digit codes set out in 49 CFR, § 123.52 *Commodity codes required*, as prescribed therein.

On the same date the Commission instituted a rule-making proceeding, No. 34315, *Commodity Statistics Reporting—Extent and Disclosure*, to consider, among other things, whether to impose rules withholding all or part of commodity statistics reports of railroads, electric railroads and water carriers from public inspection, and reopened Ex Parte No.

205, *Motor Carrier Freight Commodity Statistics*, for reconsideration with No. 34315.

By petition filed October 30, 1963, the Association of American Railroads asks for reconsideration of the order in No. 34206, and modification of the effective date, specifically: (1) That the effective date of January 1, 1964 be postponed until the first day of the calendar quarter following a final order disposing of the disclosure issue in No. 34315; or (2) that, if no change be made in the effective date, (a) class I railroads be excused from filing commodity reports under the code prescribed in No. 34206 until such final order is entered in No. 34315, or (b) the class I railroad reports filed under No. 34206 be withheld from public disclosure pending entry of such order in No. 34315; or (3) that the Commission adopt a code based entirely on the 35 2-digit groups; and (4) that, reporting classes be defined by Commission recognition and adoption of the definitions contained in the Association's 7-digit code, its "Standard Transportation Commodity Code." The named AAR code is compatible with the Bureau of the Budget's "Commodity Classification for Transportation Statistics" through the 5-digit level, and with the selected codes required to be reported under No. 34206. There were no replies to the petition.

The Association asserts that the inequality of disclosure, which it believes to exist in present reporting requirements would be increased under the order in No. 34206, which requires the reporting of more commodity detail than presently is the case, and continues the railroad reporting on a quarterly as well as annual basis. The individual commodity statistics reports by railroads, on quarterly and annual bases, would continue to be open to public inspection, while the annual reports by motor carriers would still be withheld from public inspection under 49 CFR Part 2067.

In view of the desirability that the collection of data, on the basis of the revised commodity codes in No. 34206 be made effective at the earliest possible date, the request for postponement of the January 1964 effective date will be denied. The request that class I railroads be excused from filing commodity statistics reports until disposition of No. 34315, likewise objectionable because of delay, also might render difficult or impossible the collection, at some future date, of commodity data on the basis prescribed in No. 34206. This request accordingly will be denied.

In further consideration of the desirability of establishing reporting under No. 34206 by January 1, 1964, and of the pendency in No. 34315 of questions as to the disclosure of commodity statistics reports by carriers of all modes, there would appear to be no reason why the petition should not be granted so far as it requests the withholding of individual class I railroad reports from inspection, pending disposition of No. 34315.

As the individual commodity statistics reports to be filed by railroads will be withheld from public inspection pending disposition of No. 34315, the alternative request under (3) for adoption of a 2-